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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 638]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 638 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 285,000 cartons during the period November 6 through November 12, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 638 (§ 910.938) is effective for the period November 6 through November 12, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administrative Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on November 1, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.938 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.938 Lemon Regulation 638.

The quantity of lemons grown in California and Arizona which may be handled during the period November 6, 1988, through November 12, 1988, is established at 285,000 cartons.

Dated: November 2, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88–25684 Filed 11–3–88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88–179]

Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extention of comment period.

SUMMARY: We are extending the comment period for our interim rules that amended the Horse Protection regulations regarding pads, action devices, weights, boots and packing materials used on horses. This notice of extension of the comment periods is effective upon signatrue. This extension will provide interested persons with additional time in which to prepare comments on the interim rules.

DATES: Consideration will be given only to written comments on Docket No. 88–052, Docket No. 88–079, and Docket No. 88–125 that are postmarked or received on or before November 22, 1988.

ADDRESSES: Send an original and two copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88–052, Docket No. 88–079, or Docket No. 88–125. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833.

SUPPLEMENTARY INFORMATION: On April 26, 1988, we published in the **Federal Register** (53 FR 14778–14782, Docket No. 88–052) an interim rule that amended the Horse Protection Regulations by expanding the list of devices and equipment prohibited for use on any horse at any horse show, exhibition, sale, or auction. Additionally, the interim rule prohibited the use on any horse of weights other than horseshoes, and of horseshoes weighing more than 16 ounces each. The interim rule also clarified which horses are subject to the scar rule.

On May 2, 1988, we published in the **Federal Register** (53 FR 15640–15641, Docket No. 88–079) an interim rule that removed certain restrictions on weights, horseshoes, and boots imposed by the April 26 interim rule, and that reinstated certain restrictions on the placement of lead and other weights on horses.

Comments on both the April 26 and May 2 interim rules were required to be postmarked or received on or before June 27, 1988. On jude 29, 1988, we published in the **Federal Register** (53 FR 24437, Doclet No. 88–111) a notice reopening and extending the comment periods for both interim rules. Comments were required to be postmarked or received on or before July 15, 1988. However, those comment periods were subsquently reopened again, as explained below.

On July 28, 1988, we published in the **Federal Register** (53 FR 28366–28373, Docket No. 88–125) an interim rule that revised the list of devices and equipment prohibited for use on horses at any horse show, exhibition, sale, or auction. We removed provisions established by the Arpil 26 interim rule that would have phased in a miximum pad height of 1 inch, and substituted a prohibition on the use of pads that exceed 50 percent of the horse's natural foot length, or that fail to comply with other specified requirements. We prohibited packing materials between pad and hoof, except for certain approved materials, and expanded the restrictions on the use of weights on horses. We also amended the regulations to allow the use of plastic pliant pads on horses.

Additionally, in the July 28 interim rule, we reopened and extended the comment periods on the April 26 and May 2 interim rules, by inviting comments on those two interim rules for the duration of the comment period established for the July 28 interim rule. Comments on all three interim rules were required to be postmarked or received on or before October 31, 1988.

Shortly before the comment periods closed, we received a request to extend until November 22, 1988, the comment period on the July 28, 1988 interim rule (Docket No. 88–125). In response, we are extending the comment periods on Docket No. 88–052, Docket No. 88–079, and Docket No. 88–125, so that we may consider all written comments postmarked or received on or before November 22, 1988. This notice of extension of the comment periods is effective upon signature. This action will allow the requestor and all other interested persons additional time to prepare comments.

On October 24, 1988, we published in the **Federal Register** (53 FR 41561–41562, Docket No. 88–160) an interim rule that removed language—inadvertently retained in the July 28 interim rule—that would have terminated after October 31, 1988, provisions that prohibit heel buildup in excess of 1 inch on yearling horse. We indicated in the October 24 interim rule that comments on that rule are required to be postmarket or received on or before November 23, 1988. We are making no change to that November 23 deadline.

Done at Washington, DC, this 31 day of October, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–25558 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–AWA–52]

Establishment of Airport Radar Service Areas; Baton Rouge Metropolitan; Ryan Field, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the description of the Baton Rouge Metropolitan, Ryan Field, LA, Airport Radar Service Area (ARSA). An ARSA is operational only during the hours of operation of the control tower and associated radar approach control facility. Baton Rouge Tower and Approach Control Facility provide service only during a portion of the day. The description of these hours was inadvertently omitted from the ARSA description as published on June 28, 1988. This action corrects that description.

EFFECTIVE DATE: 0901 U.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Betty W. Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88–14547 was published on June 28, 1988, establishing the Baton Rouge Metropolitan, Ryan Field, LA, ARSA and two other ARSA's. The legal description of the Baton Rouge ARSA inadvertently omitted a narrative description of the limited hours of operation. An ARSA is operational only during the hours the control tower and approach control facility are operating. This action corrects that omission.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter

that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 88–14547, as published in the **Federal Register** on June 28, 1988 (53 FR 24406), is corrected as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Baton Rouge Metropolitan, Ryan Field, LA [Amended]

By adding the following words to the end of the description: "This airport radar service area is effective during the specific days and hours of operation of the Baton Rouge Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory."

Issued in Washington, DC, on October 26, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–25517 Filed 11–3–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ANM–12]

Alteration of Transition Area; Vernal, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adds 1,200 foot transition area at Vernal, Utah, to provide controlled airspace to encompass a new departure procedure for the Vernal Airport. This action does not change the existing 700 foot transition area.

EFFECTIVE DATE: 0901 U.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 88–ANM–12, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2536.

SUPPLEMENTAL INFORMATION:

History

On August 18, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to add 1,200 foot transition area in the vicinity of Vernal, Utah. (53 FR 31366). In that proposal one distance was stated as 14.5 nautical miles. All references should be statute miles, therefore, this rule corrects that oversight to 14.5 miles.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is intended to provide additional controlled airspace in the vicinity of Vernal, Utah. Additional controlled airspace is required to accommodate a new departure procedure for the Vernal Airport to protect aircraft climbing in the Vernal Very High Frequency Omnidirectional Range Station (VOR) holding pattern.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures 44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71181 is amended as follows:

Vernal, Utah (Revised)

That airspace extending upward from 700 feet above the surface within 9.5 miles northeast and 5 miles southwest of the Vernal VOR 157° and 337° radials, extending from 10 miles northwest to 18.5 miles southeast of the VOR; that airspace extending upward from 1,200 feet above the surface within 14.5 miles northeast and 9.5 miles southwest of the Vernal VOR 157° and 337° radials, extending from 13 miles northwest to 22 miles southeast of the VOR; excluding those portions within the VOR Federal airways.

Issued in Seattle, Washington, on October 9, 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88–22515 Filed 11–3–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AWP–12]

Revision to VOR Federal Airways, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Cancellation of final rule before effective date.

SUMMARY: This action cancels Airspace Docket No. 88–AWP–12 which was published in the **Federal Register** on September 27, 1988, and was to be effective November 17, 1988. This docket was proposed in error and will be resubmitted at a later date.

EFFECTIVE DATE: 0901 UTC, September 27, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0166.

SUPPLEMENTARY INFORMATION:

History

On September 27, 1988, the FAA published a final rule which amended Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the description of several VOR Federal Airways in Hawaii (53 FR 37543). This docket was proposed in error and will be resubmitted at a later date.

Cancellation of the Final Rule

The final rule issued as Airspace Docket No. 88–AWP–12 and published in the **Federal Register** on September 27, 1988, (53 FR 37543), is hereby cancelled.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

Issued in Los Angeles, California on October 24, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division.

[FR Doc. 88–25516 Filed 11–3–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 139

[Docket No. 24812; Amdt. 139–15]

Airport Certification; Extension of Certain Compliance Dates; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; extension of compliance dates; correction.

SUMMARY: FAA is correcting errors in Amendment Number 139–14, "Airport Certification; Extension of Certain Compliance Dates." In FR Doc. 88–23951, published Tuesday, October 18, 1988, on page 40842, please correct the amendment number "139–14 to read "139–15."

FOR FURTHER INFORMATION CONTACT: Mr. Jose Roman, Jr., Safety and Compliance Division (AAS–300), Office of Airport Standards, telephone (202) 267–8724.

Michael D. Triplett,

Docket Section, Program Management Staff, AGC–10.

[FR Doc. 88–25518 Filed 11–3–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

30 CFR Parts 56 and 57

Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines; Corrections

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; corrections.

SUMMARY: This notice corrects several typographical errors in the final rule for Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment which appeared in the **Federal Register** on August 25, 1988, (53 FR 32496).

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On August 25, 1988, the Mine Safety and Health Administration (MSHA) published a final rule to revise its safety standards for Loading, Hauling, and Dumping and Machinery and Equipment in Title 30 of the Code of Federal Regulations (53 FR 32496). This document corrects several typographical errors in this rule.

1. Page 32502, § 56/57.9306, first paragraph, 3rd line, after "and", remove "56/".

2. Page 32509, § 56/57.14107, last line of the first paragraph, remove "above" and add "away from".

3. Page 32513 middle column, last full paragraph, 6th line, "alarms" not "alrams".

4. Page 32518, Derivation Table, first column, under the heading "New No.", add "0" to "56/57.900" to read "56/57.9000".

5. Page 32518, middle column, Distribution Table, 5th line, remove "both" add "this", also, remove "s" on "rules".

6. Page 32518, Distribution Table, under the heading "New No."—

Add "& 56/57.14000" to "56/57.9000".

Remove "56/57.14108" and add "56/57.14109".

Remove "56/57.9302" add "56/57.14217".

Remove "56/57.14105" and add "56/57.14104".

Add "56/" before "57.9306; 57/9310; 57.9310; and 57.9312".

Add "56/" to "57.9101".

7. Remove duplicated material in lines "58–82", Old No. and New No., entries "56/57.9001–57.9115 in the Distribution Table.

8. Page 32519, first column, Old No. add "56/57" before ".14007"; in New No. column, add "56/57.14112". At the end of the table, add in Old No. column, "no existing standard", in New No. column, add "56/57.14131".

§ 56.14101 [Amended]

9. Page 32523, add "M-" before "2" and "1" each time it appears in the heading for Table 2.

§ 56.14115 [Amended]

10. Page 32524, § 56.14115, paragraph (a), add "degree sign" after "270".

§ 56.14130 [Amended]

11. Page 32523 § 56.14130, middle column, should read "(b)" not "(5)" in ROPS construction.

12. Page 32524, § 56.14130, paragraph (f)(2), last line should read "(b) and (h)", not "(b) and (c)".

§ 56.14206 [Amended]

13. Page 32525, § 56.14206, paragraph (b), add "shall" after "blades".

§ 57.14101 [Amended]

14. Page 32530, add "M-" before "2" and "1" each time it appears in the heading for Table 2.

§ 57.14114 [Amended]

15. Page 32531, § 57.14114, second line, change "value" to "valve". Also § 57.14115 in paragraph (a) third line, add "degree sign" after "270".

§ 57.14130 [Amended]

16. Page 32531, § 57.14130, paragraph (f)(2) [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION] should read "October 24, 1988". Also, next to last line of same paragraph, change "(c) to "(h).

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 31, 1988.

[FR Doc. 88–25477 Filed 11–3–88; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

RIN 2125–AB95

Hours of Service of Drivers; Technical Correction

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the paragraph designation for automatic on-board recording device under the

"Definitions" section of the rule on hours of service of drivers, which appeared in the **Federal Register** on September 30, 1988 (53 FR 38666).

EFFECTIVE DATE: September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Laska, (202) 366–1383.

The FHWA hereby amends 49 CFR Part 395 as set forth below:

PART 395—[AMENDED]

§ 395.2 [Amended]

In FR Doc. 88–22563, in the issue of Friday, September 30, 1988 on page 38670, in 49 CFR 395.2, paragraph (k) is redesignated as paragraph (i).

(23 U.S.C. 315; 49 CFR 1.48)

Issued on November 1, 1988.

Michael J. Laska,

Acting Chief Counsel, Federal Highway Administration.

[FR Doc. 88–25641 Filed 11–3–88; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The Fish and Wildlife Service is correcting errors in the rule prescribing the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons in 10 States, the merganser bag and possession limits in the Mississippi Flyway, and the rail season in Kansas, that appeared in the **Federal Register** on September 28, 1988 (53 FR 37944).

DATE: Effective on September 28, 1988.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Phone (202) 254–3207.

SUPPLEMENTARY INFORMATION: In the September 28, 1988, **Federal Register** (53 FR 37944) the Fish and Wildlife Service published a final rule prescribing the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons and certain other migratory bird seasons in the conterminous United States. The rule contained errors in the waterfowl season entries for Delaware, Florida, Georgia, New Jersey, North Carolina, South Carolina, Illinois, Minnesota, Kansas, and North Dakota, the merganser bag and possession limits for the Mississippi Flyway, and the sora and Virginia rail season in Kansas, which are discussed briefly below and corrected by this notice.

Public comment was received on proposed rules for the seasons and limits contemplated herein. These comments were addressed in the **Federal Register** dated August 12, 1988 (53 FR 30622), and September 16, 1988 (53 FR 36033). The corrections are typographical in nature and involve no change in substance in the contents of prior proposed and final rules.

PART 20—[AMENDED]

The following corrections are made in Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States published in the September 28, 1988, **Federal Register** (53 FR 37944).

§ 20.104 [Corrected]

1. On page 37947 the heading *Kansas* should be followed by "(11)."

2. On page 37948 footnote (11) is corrected to read "In New Mexico and Kansas the limits on sora and Virginia rails are 10 daily and 10 in possession."

3. On page 37949 under the heading *Delaware*, the season dates for Snow (including blue) for Bombay Hook National Wildlife Refuge of "Oct. 17–Oct. 29(9) and Oct. 17–Oct. 29(9)" are corrected to read "Oct. 17–Oct. 29(9) and Nov. 7–Nov. 18"; and Statewide of "Oct. 31–Nov. 5 and Nov. 7–Nov. 18 and Nov. 22–Jan. 31" are corrected to read "Oct. 31–Nov. 5 and Nov. 22–Jan. 31."

4. On page 37949 under the heading *Florida*, subheading Ducks is corrected to add Mergansers, with season dates same as for ducks, and bag and possession limits of 5 and 10, respectively.

5. On page 37949 under the heading *Georgia* the duck season dates of "Nov. 4–Nov. 7 and Dec. 4–Jan. 8" are corrected to read "Nov. 24–Nov. 27 and Dec. 14–Jan. 8."

6. On page 37950 under the heading *New Jersey*, the Gallinules and Moorhens season reads "closed" and is corrected to read "Sept. 1–Nov. 9" with bag and possession limits of 10 and 20, respectively.

7. On page 37951 under the heading *North Carolina*, the duck season dates of "Dec. 13–Jan. 15" are corrected to read "Dec. 15–Jan. 7." The sea ducks season dates of "Oct. 11–Jan. 14" are corrected to read "Oct. 1–Jan. 14." The brant season dates of "Oct. 12–Oct. 15 and Nov. 24–Nov. 26 and Dec. 16–Jan. 7" are corrected to read "Oct. 13–Oct. 15 and Nov. 24–Nov. 26 and Dec. 15–Jan. 7."

8. On page 37952 the first sentence of footnote (12) "In South Carolina see State regulations for further restrictions on black ducks and mottled ducks" is corrected to read "In South Carolina there will be no open season on black ducks or mottled ducks during the period Nov. 19–Nov. 26; during the period Dec. 17–Jan. 7 the daily bag limit may not include more than 1 female mallard or 1 black duck or 1 mottled duck."

9. On page 37952 under the heading *Mississippi Flyway*, subheading *Flywaywide Restrictions*, "The season dates for mergansers and coots are the same as for ducks in the following tables," should be corrected to add "The bag and possession limits for mergansers are 5 and 10, respectively, except for hooded mergansers the bag and possession limits are 1 and 2, respectively."

10. On page 37953 under the heading *Illinois*, the limit for Geese in the Central Zone's Tri-County Zone(1) the daily bag of "1" is corrected to read "2." Under subheading Limits include no more than: the Canada goose possession limit of "3" is corrected to read "4."

11. On page 37954 under the heading *Minnesota*, subheading Limits include no more than: the Pintails season dates of "Oct. 8–Oct. 14" are deleted and will run concurrent with the duck season; the repeat entry for "Pintails" following Redheads is deleted in its entirety.

12. On page 37956 under the heading *Kansas*, subheading Dark Geese(2) in the parentheses during the period Nov. 28–Jan. 8 the daily bag limit will be 1 Canada goose or 1 white-fronted goose; "is corrected to read" during the period Nov. 28–Jan. 8 the daily bag limit will be 1 Canada goose and 1 white-fronted goose; The season dates for Light geese in Unit 2 (remainder of State) of "Oct. 13–Dec. 4 and Dec. 17–Feb. 3" is corrected to read "Oct. 29–Dec. 4 and Dec. 17–Feb. 3."

13. On page 37957 under the heading *New Mexico*, season dates for Light geese in the Rio Grande Valley Unit of "Nov. 4–Feb. 28" are corrected to read "Nov. 14–Feb. 28."

14. On page 37957 under the heading *North Dakota*, season dates for ducks in the Low Plains Area of "Oct. 3–Nov. 13 and Nov. 19–Nov. 20" are corrected to read "Oct. 8–Nov. 13 and Nov. 19–Nov. 20."

15. On page 37960 under the heading *Colorado* season dates for ducks of "Oct. 8–Oct. 14 and Nov. 14–Jan. 2" are corrected to read "Oct. 8–Oct. 14 and Nov. 12–Jan. 2."

16. On page 37964 under the heading *Central Flyway*, subheading New Mexico, the season dates for ducks of "Oct. 8–Jan. 15" are corrected to read "Ducks: North Zone Sept. 1–Dec. 16; and South Zone Nov. 9–Feb. 23."

17. On page 37964 under the heading *Pacific Flyway*, subheading New Mexico the season dates for ducks of "Oct. 8–Jan. 8" are corrected to read "Oct. 8–Jan. 22." The season dates for Snow, blue and Ross' geese of "Oct. 8–Jan. 8" are corrected to read "Oct. 8–Jan. 15."

For an additional correction of this document see the Corrections Section of this **Federal Register**.

Date: October 25, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife Parks.

[FR Doc. 88–25231 Filed 11–3–88; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 53, No. 214
Friday, November 4, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 34

[AMS-TB-88-018]

Amendment to Regulations for the Export Tobacco Seed and Plant Exportation Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule reduces the maximum quantity of tobacco seeds that may be exported pursuant to the Tobacco Seed and Plant Exportation Act which prohibits the exportation of any tobacco seed and live tobacco plants from the United States unless a written permit has been granted by the Secretary of Agriculture. Permits are issued by the Secretary only upon application containing satisfactory proof that the seeds or plants are to be used for experimental purposes only.

DATE: Comments are due on or before December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Larry L. Crabtree, Chief, Market Information and Program Analysis Branch, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20090–6456, (202) 447–3489.

SUPPLEMENTARY INFORMATION: The Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517) prohibits the exportation of any tobacco seed or live tobacco plants from the United States unless such exportation is in pursuance of a written permit granted by the Secretary of Agriculture. Permits are granted by the Secretary only upon written application containing satisfactory proof that the seeds or plants are to be used for experimental purposes only. The current regulations at 7 CFR 34.4(b) restrict the maximum quantity which may be exported to 14 grams or one-half ounce of seed and 500 live plants of any one variety with the exception of the species Nicotiana Rustica, which is not subject to the restrictions of the Act. The Department is amending these regulations to change the maximum permitted quantity of seed to one-half gram per variety. This reduction should pose no impediment to bonafide experimentation because one-half gram contains at least 5,000 individual seeds, which is an ample amount of seed for experimental purposes. In recent years the Department has not approved any permits in excess of one-half gram of seed. The Department believes that the proposed maximum quantity of seed better reflects the proper amounts of seeds that may be used in conducting agricultural experiments in the course of scientific research.

This proposed rule has been reviewed under U.S.D.A. procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule because it does not meet any of the criteria established for major rules under the executive order.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act, (5 U.S.C. 601 et seq.) full consideration has been given to the potential economic impact upon small entities.

The proposed rule would allow the exportation of a sufficient number of tobacco seeds for bonafide experimental purposes. The proposed change would in no way affect normal competition in the marketplace. The Administrator of the Agricultural Marketing Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 34

Permits, Seeds, Tobacco.

For the reasons set forth in the preamble, 7 CFR Part 34 is proposed to be amended as follows:

PART 34—TOBACCO SEED AND PLANT EXPORTATION ACT

1. The authority citation for 7 CFR Part 34 is revised to read as follows:

Authority: 7 U.S.C. 516–517.

2. Section 34.4(b) is revised to read as follows:

§ 34.4 Restriction upon issuance of permits.

* * * * *

(b) Quantities permitted to be exported will be restricted to not more than one-half gram or 500 live plants of any one variety, with the exception of the species Nicotiana Rustica, to which this restriction will not apply.

Dated: November 1, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–25625 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 948

[FV–88–134]

Irish Potatoes Grown in Colorado Area 2; Proposed Reduction in Minimum Size Requirement for Round Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reduce the minimum diameter for round potato varieties from 2⅛ inches to 2 inches in diameter. The size change would also apply to imported red-skinned round type potatoes. This action is expected to foster increased consumption and have a positive impact on the industry.

DATE: Comments must be received by November 21, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR Part 948), both as amended, regulating the handling of Irish potatoes grown in designated counties of Colorado Area No. 2. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. Also, there are about 20 potato importers subject to the requirements of the potato import regulation. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes and importers of potatoes may be classified as small entities.

The San Luis Valley Potato Administrative Committee Area 2 estimated that shipments during the 1987–88 season totaled 29,252 loads at about 480 hundredweight (cwt.) per load. Of the total, 97 percent or 13,686,191 cwt., entered the fresh market and two percent (315,857 cwt.) was shipped to processors. Culls approximated 1.4 million cwt., which were utilized for starch.

The breakdown of fresh shipments by variety was 69.2 percent Centennial Russets (9,469,033 cwt.), 23.9 percent Russet Burbanks (3,268,607 cwt.), 6.7 percent reds (927,231 cwt.), and 0.2 percent other varieties (21,318 cwt.).

One percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 63 percent U.S. No. 1, 21 percent U.S. Commercial, 13 percent U.S. No. 2, and two percent U.S. No. 1/ Size B.

The handling requiremetns for fresh market shipments of Colorado Area 2 potatoes are specified in § 948.386 [53 FR 8145, March 14, 1988] and, with the exception of the maturity requirements, are in effect all year long. The current minimum grade, size, and maturity requirements require that fresh potates be shipped under the following conditions. Round variety potatoes must grade at least U.S. No. 2 and be at least 2⅛ inches in diameter. Russet Burbank potatoes must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All other long varieties must be U.S. No. 2 or better grade and 2 inches minimum diameter or 4 ounces minimum weight. All varieties of potatoes may be Size B if they otherwise grade U.S. No. 1. Size B potatoes have a minimum diameter of 1½ inches and maximum diameter of 2¼ inches. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period August 25 through October 31 specify that potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

This proposed rule would reduce the minimum size requirement for round potato varieties from 2⅛ to 2 inches in diameter. This change was recommended by a vote of 10 to two by the San Luis Valley Potato Administrative Committee Area 2 at its August 18 meeting.

The minimum size requirement for round potato varieties was 2 inches in diameter for many years. During the 1987–88 marketing season, the minimum size requirement was increased to 2⅛ inches in diameter. This change was intended to upgrade the pack and thereby foster increased consumption and have a positive impact on the industry. However, this size increase did not satisfy consumer preferences and proved unsatisfactory in the marketplace.

Consumer demand has increased for small round potato varieties. Virtually all round potatoes grown in Colorado's San Luis Valley are red-skinned. Such potatoes typically account for about 6.5 percent of San Luis Valley's total crop. Centennial Russets and Russet Burbanks (long white varieties) are the other dominant varieties. There are minimal shipments of round white potatoes from this area.

The committee concluded the proposed change in the minimum size requirement for round potato varieties would provide handlers the opportunity to ship smaller round potatoes (primarily red skinned) without adversely affecting the market for larger potatoes.

Quality assurance is very important to the Colorado (Area 2) potato industry both within and outside of the State. Providing the public with quality potatoes which are appealing and responsive to consumer trends is necessary in order to maintain market share. This action is expected to foster increased consumption and benefit Colorado Area 2 potato growers and handlers.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for the particular area.

In the case of potatoes, the current import regulation (7 CFR 980.1, 37 FR 8059, April 25, 1972) specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (7 CFR Part 945) during each month of the marketing year. The import requirements for round white types are based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31 (7 CFR Part 953), and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year (7 CFR Part 948).

The quality standards imposed upon imports of red skinned, round type potatoes are based on that type grown in Washington during the months of July and August (7 CFR Part 946). During the remainder of the year, the import

requirements are based upon those in effect for potatoes grown in Colorado Area 2 (7 CFR Part 948).

Because this proposed rule would reduce the minimum size requirement for round potato varieties, and virtually all round potatoes grown in Area No. 2 red skinned, this change would be applicable to imports of red-skinned round type potatoes from September 1 to June 30 each season.

No change would be required in the language of § 980.1 or § 948.386(h) Applicability to Imports.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 15 days is deemed appropriate because the shipping season for Colorado Area 2 potatoes has begun, and it is important that any change resulting from this rulemaking be in effect as soon as possible to be of maximum benefit to producers and handlers of potatoes in the production area. Producers and handlers are already aware of the recommended change which would relax current handling requirements.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 948.386 is amended by revising paragraph (a)(1) to read as follows:

§ 948.386 Handling regulation.

* * * * *

(a) *Minimum grade and size requirements.*—(1) Round varieties, U.S. No. 2, or better grade, 2 inches minimum diameter.

* * * *

Dated: November 1, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–25626 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1106

[DA–89–001]

Milk in the Southwest Plains Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal for the months of November 1988 through August 1989 that would suspend the shipping standards for supply plants under the Southwest Plains order. The action was requested by Kraft, Inc., Associated Milk Porducers, Inc., and Mid-America Dairymen, Inc. The proponents contend that the action is necessary to eliminate costly and inefficient movements of milk from supply plants that would have to be made to assure the continued pricing and pooling of milk of producers who have historically supplied the market's fluid milk needs.

DATE: Comments are due on or before November 14, 1988.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Soutwest Plains marketing area is being considered for the months of November 1988 through August 1989.

1. In § 1106.6, the words "during the month".

1. In § 1106.7(b)(1), the words "of February" and the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include November in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposal for November 1988 through August 1989 would suspend the shipping standards for supply plants that were previously associated with the market. The order defines a supply plant as a plant from which fluid milk products are transferred or diverted to distributing plants during the month. It further provides that in order to be pooled under the order during the months of September through January, 50 percent of a supply plant's receipts must be shipped to distributing plants each month. Also, a supply plant that was pooled during each of the immediately preceding months of September through Janaury shall continue to be pooled during the following months of February through August if 20 percent of its receipts are shipped to distributing plants. The requested action would remove all shipping standards for supply plants during the months of November 1988

through August 1989 that were pooled under the order during the immediately preceding September through Janaury period.

The suspension was requested by Kraft, Inc., a handler who operates a supply plant that is pooled under the order. The proposed action is supported by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial number of producers who supply the market. The organizations contend that there are ample supplies of direct-ship milk located near to distributing plants that are available to supply the fluid milk needs of such plants during the months of November 1988 through August 1989. Thus, the organizations contend that supplemental shipments from supply plants will not be needed during such months. The organizations contend that in the absence of a suspension action, costly and inefficient movements of milk from supply plants would have to be made to assure the continued pooling of milk of dairy farmers who have historically supplied the market's fluid milk needs.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on October 31, 1988.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 88–25530 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1709

Rural Development

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule: extension of comment period.

SUMMARY: The Rural Electrification Administration (REA) proposes to extend the period to comment on a proposed rule that adds a new Part 1709, Rural Development, and adds a new Subpart B, Rural Economic Development Loan and Grant Program. The proposed rule appeared in the **Federal Register** on October 27, 1988, starting on page 43442.

DATE: Public comments concerning this proposed rule must be received by REA no later than December 28, 1988.

ADDRESS: Comments may be mailed to Blaine Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4063—South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected in Room 4063 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Blaine Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4063—South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9552.

Dated: October 31, 1988.

Jack Van Mark,

Acting Administrator.

[FR Doc. 88–25557 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–15–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21 and 50

Criteria And Procedures for the Reporting of Defects

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations on the reporting of safety defects. The proposed revisions are a result of the Commission efforts to apply the experience gained as a result of the Three Mile Island accident and also reflect Commission experience to date with the existing regulations. The proposed amendments would be applicable to Commission licensees, and to nonlicensees who construct facilities for, or supply components to facilities or activities licensed by the Commission. the amendments would eliminate duplicative reporting of defects, clarify the criteria for reporting defects, and would establish uniform time periods for reporting and uniform requirements for the content of reports of defects.

DATES: Submit comments by January 3, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, MD 20852 between 7:30 a.m. and 4:15 p.m. Federal workdays. Copies of comments received and the regulatory analysis may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: W.R. Jones, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–4442.

SUPPLEMENTARY INFORMATION:

Background

Existing Commission regulations contain several safety deficiency reporting requirements applicable to the construction and operation of nuclear power plants:

—10 CFR Part 21 applies to all NRC licensees, as well as nonlicensees who construct facilities for or supply components to these licensees, and requires the reporting of defects that could create a "substantial safety hazard," as defined in regulations.

—10 CFR 50.55(e) applies solely to the holders of construction permits and currently requires the reporting of "significant deviations" or "significant deficiencies" which could adversely affect safety.

—10 CFR 50.72 and 50.73 establish reporting system that applies uniformly to all operating nuclear power plants. These regulations require the licensee to make prompt telephone notification to NRC and to submit a written report for each significant operating event or adverse plant condition. Section 50.73 replaced previous Licensee Event Report (LER) requirements in § 50.36.

—10 CFR 73.71(c) applies to licensees and establishes a reporting system for security failure, degradations, or discovered vulnerability in a safeguard systems. As stated in § 73.71(c), a report under § 73.71(c) satisfies reporting requirements in both § 50.72 and 10 CFR Part 21.

Task II J.4 of the TMI Action Plan directed the NRC staff to evaluate and revise, if necessary, the existing requirements of 10 CFR Part 21 and § 50.55(e) to ensure prompt and comprehensive reporting. Over several years, the need for revision of these regulations has become apparent. Accordingly, based upon the staff experience with Part 21 and § 50.55(e), the proposed revision would:

1. Eliminate duplicative evaluation and reporting;

2. More clearly and uniformly define the defects that need to be reported under § 50.55(e);

3. Establish consistent time limits for reporting;

4. Establish a time limit for transfer of information to end users when a substantial safety hazard determination is not possible;

5. Establish a uniform content for reporting for § 50.55(e) and Part 21; and

6. Make other more minor changes detailed below.

These revisions will reduce the amount of time and effort expended by industry in complying with existing reporting and evaluation requirements while still ensuring that safety deficiencies are identified and evaluated in a timely manner. The proposed revision is aimed at improving the evaluation and reporting of safety defects from the nuclear industry.

Part 21

Part 21 was intended to implement section 206 of the Energy Reorganization Act of 1974 (42 U.S.C. 5846). Section 206 requires directors and responsible officers of firms constructing, owning, operating, or supplying the components of any facility or activity licensed under the Atomic Energy Act to report to the Commission the discovery of "defects" in "basic components" that could create a "substantial safety hazard." The purpose of section 206 was to ensure that the Commission has prompt information concerning safety defects. In addition to imposing obligations on the directors and responsible officers of NRC licensees, section 206 also imposes obligations on the directors and responsible officers of nonlicensees that construct facilities for or supply components to licensed facilities or activities. Any individual officer or director who knowingly fails to comply with the notification requirements is subject to civil penalties.

On March 3, 1975, the NRC published a proposed rule designed to implement Section 206 (40 FR 8832), and on June 6, 1977, issued the final rule, adding Part 21 to the Commission's regulations (42 FR 28893).

The regulations in 10 CFR Part 21 impose reporting requirements on directors and responsible officers of firms constructing, owning, operating, or supplying components for any facility or activity licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended. Part 21 was amended on October 19, 1978 (43 FR 48721) to exempt "commercial grade items" from Part 21 until the items were "dedicated" for use as a basic component for a nuclear facility.

Approximately 12,000 organizations, licensees, and nonlicensees, are under the scope of Part 21 reporting requirements. Licensees include those granted licenses under the following parts: production and utilization facility licenses issued under 10 CFR Part 50, including nuclear power plants and research and test reactors at various stages in the licensing process; byproduct material licenses issued under Parts 30 through 35; source material licenses issued under Part 40; high-level radioactive waste disposal issued under Part 60; land disposal of radioactive waste issued under Part 61; special nuclear materials licenses issued under Part 70; the packaging of radioactive materials for transport under Part 71; and spent fuel storage under Part 72.

The nonlicensee suppliers covered under Part 21 are firms of many different sizes, supplying many different types of basic components and services to NRC licensees. For example, construction and operation of a nuclear power plant involves a many-level procurement chain. At the top of the chain is the electrical utility and the utility's major contractors such as the nuclear steam system supplier. The next level includes manufacturers who produce components specifically designed for nuclear use such as instrumentation, controls, major piping, pumps, and valves. These manufacturers in turn procure necessary parts, such as resistors, wiring, solid-state devices, and other hardware, from a multitude of sources. For nuclear power reactors, Part 21 applies to all tiers of the supply chain to all activities which could create a substantial safety hazard. Approximately 300 reports are submitted to the NRC annually under Part 21. These reports of potential safety problems have resulted in generic communications such as NRC bulletins, generic letters, and information notices, and have contributed to the overall improved safety of the nuclear industry.

Section 50.55(e)

Section 50.55(e) of 10 CFR Part 50, originally published as a final rule on March 30, 1972 (37 FR 6459), establishes requirements for reporting deficiencies occurring during the design and construction of nuclear power plants. The rule was designed to enable the NRC to receive prompt notification of deficiencies and to have timely information on which to base an evaluation of the potential safety consequences of the deficiency and detemine if further regulatory action is required. Therefore, the holder of a permit for the construction of a nuclear power plant is required to notify the Commission of each significant deficiency found in the processes of design and construction, which if it were to have remained uncorrected, could have adversely affected the safety of operations of the nuclear power plant at any time throughout the expected lifetime of the plant.

Approximately 900 reports are submitted to the NRC annually under § 50.55(e). As with Part 21, these § 50.55(e) reports have formed the basis for generic communications such as NRC bulletins, generic letters, and information notices and have also contributed to the overall improved safety of the nuclear industry.

The Proposed Action

1. *Eliminating Duplicative Evaluation and Reporting Requirements.* As stated above, Commission regulations contain several safety deficiency reporting requirements. Although distinctions exist between these requirements, staff experience indicates a need to eliminate duplication in reporting or evaluation among Part 21, § 50.55(e), and § 50.73. A number of instances have occurred where the same deficiency in a component was evaluated and reported by two different organizations, one attempting to satisfy the criteria of Part 21, and the other attempting to meet the differently worded criteria of § 50.55(e). The fact that the reporting criteria are different for each requirement and the lack of any explicit framework in the regulations to preclude duplicative reporting have led to duplication of both licensee and NRC staff effort.

The proposed revision to § 21.2 would relieve holders of construction permits under § 50.23 from their Part 21 evaluation, notification, and reporting responsibilities if they report a defect under § 50.55(e). The proposed revision to § 50.55(e) establishes the applicable evaluation and reporting procedures, as well as recordkeeping requirements, for construction permit holders. Compliance with these §50.55(e) requirements would be deemed to satisfy the corresponding requirements of Part 21.

In order to make the reporting of defects found during construction consistent for all production or utilization facilities, the scope of § 50.55(e), which formerly covered only the construction of nuclear power plants, is being expanded to include all construction permits issued under § 50.23. Thus, the reporting of defects found during construction at these facilities would be shifted from 10 CFR Part 21 to § 50.55(e). These facilities were previously covered by Part 21. Thus, no increase in reporting

requirement is being imposed on these facilities.

Likewise, proposed § 21.2 would explicitly relieve the officers and directors of the holders of operating licenses under Part 50 from the Part 21 evaluation, notification, and reporting requirements because defects will be reported by holders of operating licenses under § 50.73 or § 73.71. The reporting procedures and recordkeeping requirements currently in § 50.73, would be deemed to satisfy the corresponding requirements of Part 21.

Thus, the defect reporting requirements of section 206 of the Energy Reorganization Act would be met by Part 50 licensees by reporting under either § 50.55(e) or § 50.73, as appropriate. However, responsible officers and directors of a Part 50 licensee would still be subject to the civil penalty provisions of section 206(b) of the Energy Reorganization Act as set forth in § 21.61 for the failure to notify the NRC of a defect.

In addition, proposed revisions to § 21.21 would relieve vendors subject to the reporting requirements of Part 21 from reporting to the Commission under Part 21 if a defect has been previously reported under §§ 50.55(e), 50.73, or 73.71. That is, in proposed § 21.21(b)(2), for any defect identified, evaluated, and reported by a CP or OL holder pursuant to §§ 50.55(e), 50.73, or 73.71, the related vendor would not be required to provide a report.

Proposed § 50.55(e)(8) will relieve the holders of construction permits under Part 50 from reporting a defect if it has previously been reported under Part 21.

The NRC staff will continue to evaluate notifications made to NRC under Part 21, §§ 50.55(e), 50.72, 50.73 or 73.71. Where necessary, NRC staff will contact the licensee and appropriate vendor to obtain additional information. Additional vendor information obtained by NRC direct contact under the proposed amendment to § 21.21(c) would consist of information on additional locations of basic components containing the defect, corrective actions required, and advice provided to recipients of the basic components. Based on this information, the staff will then determine appropriate regulatory action. For cases in which the vendor notifies NRC and has not notified licensee purchasers, NRC would evaluate the need to notify licensees based on safety significance of the defect or noncompliance. Where warranted, NRC would notify the appropriate licensees, either directly or via a generic communication such as an Information Notice, of the existence of such a defect. NRC staff will evaluate the need to notify vendors of a licensee notification, where warranted by the safety significance and generic aspects of the defect or noncompliance, in order that vendors are aware of the existence of a defect.

Relief for holders of operating licenses from reporting under § 50.73 similar to that in proposed § 50.55(e) outlined above will be implemented in the near future. However, the original intent of NRC defect reporting requirements was that reporting under only one of the requirements would satisfy the other requirements. Additionally, it should be noted that staff experience with reporting under § 50.73 indicates that there is minimal duplication between this section and Part 21 and § 50.55(e). The staff is currently reviewing the reporting experience with § 50.73 since it became effective in January 1984. Changes may be required as a result of this review and this issue will be addressed at that time.

The intent of these revisions is to establish the filing of one report by a vendor, operating license holder, or construction permit holder for each separate defect, with the reporting obligation resting on the entity that discovers the defect. It is intended that § 50.55(e) will be exclusively used for the reporting of defects discovered by construction permit holders (or referred to them by a vendor who is unable to evaluate the defect); and § 50.73 will be exclusively used for the reporting of defects discovered by the holders of operating licensees (or referred to them by a vendor who cannot evaluate the defect). Part 21 will be exclusively used for reporting defects discovered by materials licenses covered under Parts 30, 31, 34, 35, 40, 60, 61, 70, 71, 72; Part 50 licensees other than nuclear power plant licensees and holders of construction permits; and vendors involved in constructing or supplying components for any facility or activity licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended.

In order to facilitate the elimination of duplicate reporting, the proposed revision also establishes § 50.55(e) content similar to that contained in 10 CFR Part 21. It is anticipated that this proposed revision will significantly reduce the reporting burdens on the regulated industry, as well as improve the Commission staff evaluation of these reports, without any loss of relevant safety information.

In addition to the reporting of defects in basic components, Part 21 also requires the reporting of failures to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission related to a substantial safety hazard. To further make reporting more consistent, holders of construction permits would notify the Commission of failures to comply under § 50.55(e) instead of Part 21 under the proposed amendments.

2. *Defining Defects To Be Reported.* Section 206 of the Energy Reorganization Act requires the reporting of "defects which could create a substantial safety hazard." Existing § 21.3(k) defines substantial safety hazard as "a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity licensed, other than for export, pursuant to Parts 30, 40, 50, 60, 61, 70, 71, or 72." In addition, the supplementary information for the original Part 21 final rulemaking, June 6, 1977 (42 FR 2889), contained the following guidance on what constitutes a "substantial safety hazard":

—Moderate exposure to, or release of, licensed material, or
—Major degradation of essential safety-related equipment, or
—Major deficiencies involving design, construction, inspection, test, or use.

Existing § 50.55(e) requires the reporting of deficiencies in design and construction which could adversely affect the safety of operations of a nuclear power plant and which represent the following:

—A significant breakdown in any portion of the quality assurance program, or
—A significant deficiency in a final design, or
—A significant deficiency in the construction of, or significant damage to a structure, system, or component requiring corrective action involving extensive effort, or
—A significant deviation from performance specifications requiring corrective action involving extensive effort.

NRC experience with § 50.55(e) reports has indicated that clarification of the type of deviation that is required to be reported would be advantageous. Accordingly, the reporting criteria in proposed § 50.55(e) are the same as those contained in § 21.3.

This increase in the reporting threshold to all construction permit holders will allow the Commission to obtain the proper level of reporting with no loss of significant safety information, i.e., the proposed amendment raising the § 50.55(e) threshold will facilitate

eliminating duplicative reporting by making the definition of defects reported under § 50.55(e) identical to those reported under Part 21. This elimination of duplication will be accomplished with no loss in critical safety information and will reduce unnecessary industry burden.

It should be pointed out that a slight difference exists between the current definition of "deviation" in Part 21 and that in the proposed § 50.55(e). In the current Part 21, "procurement documents" are specifically referred to as determining the requirements of a basic component. However, in § 50.55(e), procurement documents are not mentioned as determining these requirements. The basis for this difference is that in applying § 50.55(e), basic components will have requirements imposed on them not only by their procurement documents, but other licensee documents. In the case of Part 21, application of the regulation to vendors will require the use of procurement documents to determine the requirements which the purchaser placed on the basic component.

3. *Establishing Uniform Time Limits for Reporting.* In the current Part 21, submittal of the required written report within the five day time limit has been difficult to accomplish. In addition, the incremental information available during the subsequent 3 day interval following the initial report does not provide a meaningful addition to the information already available to the Commission. The proposed extension to 30 days for the time limit for submittal of the written followup report would allow submittal of a complete report. Also, addition of time limits for evaluation of defects will further ensure that the staff is informed regarding significant safety hazards. Thus, the proposed rule would change the time limit for submission of the required followup written report from five days to 30 days.

As outlined above, the proposed amendments would establish uniform reporting deadlines for Part 21 and § 50.55(e). Initial notification to the NRC is required within two days of identification of a defect. A difference exists between this requirement and § 50.72 where initial reporting of events or conditions is required within one to four hours depending on the event or condition. The staff believes this difference is justifiable in that § 50.72 reports involve problems at operating facilities for which remedial actions may be needed very quickly. Rapid notification is required because the NRC has a responsibility to respond rapidly to protect the health and safety of the public when there is an event or condition that could pose a potential threat of a release of radiation above normal operating levels.

Part 21 reports by vendors and § 50.55(e) reports by construction permit holders, on the other hand, involve reporting of defects which could create a substantial safety hazard if a specific event or failure should occur. Although Part 21 and § 50.55(e) reports may involve generic substantial safety hazards, the relative risk of potential failures is less than the risks of failures evidenced by actual events or conditions of plants having operating licenses. Finally, the reporting experience with §§ 50.72 and 50.73 versus Part 21 and § 50.55(e) indicates that more issues which directly affect the health and safety of the public are discovered from analyses of operating reactor events than from Part 21 and § 50.55(e) reports. Accordingly, the staff has proposed a two-day initial reporting time limit for Part 21 and § 50.55(e) as an adequate means for providing sufficient warning of potential safety problems.

4. *Establishing Time Limit for Transfer of Information.* Currently, Part 21 (§ 21.21(a)(1)(ii)) does not explicitly address time limits for transfer of information in situations for which vendors or other suppliers of components are unable to evaluate whether deficiencies could create substantial safety hazards. This inability to evaluate may be due to the vendor's or supplier's lack of knowledge of how the component is utilized by the end user or for other reasons. The proposed change to Part 21 would explicitly add a time limit provision to correct this problem. The proposal would require that if, during the evaluation period, the entity which discovers a deviation that could potentially create a substantial safety hazard determines that it is unable, due to insufficient information or other reasons, to evaluate the deficiency, then that entity must notify the purchasers of the "basic component" within five days of this determination.

5. *Reporting Content.* Proposed revisions to § 50.55(e)(6) would require the content of the information reported under § 50.55(e) to be consistent with that required by § 21.21(b)(3). These revisions will ensure that the Commission obtains all the information necessary to evaluate and take corrective action, in reference to a particular defect.

6. *Other Changes.* In addition to these major revisions, minor changes are being proposed to improve the overall quality and coherence of Part 21 and § 50.55(e).

(a) The proposed revision to § 50.55(e) would extend the period for notification of the Commission from one day to two days. In Petition for Rulemaking (PRM) 50–36, filed by the Nuclear Utility Backfitting and Reform Group (48 FR 28282), dated April 20, 1983, petitioners propose revising 10 CFR 50.55(e) reporting requirements to delete the 24 hour initial report entirely (Issue III). Alternatively, the petition recommends adoption of a deadline of five days for an initial report. This proposed rulemaking extends the initial reporting deadline under § 50.55(e) from 24 to 48 hours. The staff believes that the proposed two-day requirement will provide industry with more flexibility while still allowing sufficient warning of safety problems and is consistent with the objective of establishing uniform reporting criteria. The staff agrees that the current § 50.55(e) initial reporting requirement may be restrictive; however, the five-day recommendation proposed by PRM–50–36 is believed to be too long considering staff's need to be provided with early notification of potentially generic conditions at construction permit facilities which could affect operating facilities. This time limit will be consistent with the current Part 21 time limit. Accordingly, the proposed two-day versus 24-hour current reporting requirement addresses and resolves Issue III of PRM 50–36.

(b) Proposed § 50.55(e)(7) and revisions to § 21.51 clarify the specific records that must be maintained and their retention period to ensure compliance. Retention of procurement documents would be retained either by the vendor or the purchaser of the basic component. The vendor would be required to retain a list of the purchasers of the basic component.

(c) For consistency with §§ 50.55(e) and 50.73, Part 21 would be changed to direct correspondence to the Document Control Desk with appropriate copies to regional and headquarters offices. Also, telephone communication has been specifically directed to the NRC Operations Center.

(d) Current § 21.3(a)(3), which clarifies items which are to be considered as "basic components," includes:

"design, inspection, testing, or consulting services important to safety."

That subsection is being modified to further clarify what are intended to be significant items. The proposed subsection would be revised to include:

"safety related design, analysis, inspection, testing, quality assurance, fabrication, training, maintenance, replacement parts, or consulting services that are associated with the

basic component hardware whether these services are performed by the component supplier or others."

Also, it should be noted that, as stated in the current definition of basic component in § 21.3(a)(1), "systems" are properly considered as "basic components." These would include but not be limited to such "systems" as security and fire protection systems among other systems which can affect the safety of the facility. As an example, for power reactors, the rationale is that a defect or noncompliance in the security system is one which could allow access of an unauthorized individual into a vital area without being detected by the security system. The staff's view is that this represents a major reduction in the degree of protection afforded the health and safety of the public and is, therefore, a substantial safety hazard and would require notification.

These clarifications are consistent with current NRC practice and previous guidance provided in both NUREG 0302, Rev. 1; Remarks Presented at Public Regional Meetings to Discuss Regulations (10 CFR 21) for Reporting of Defects and Noncompliance, October, 1977; and in NRC Office of Inspection and Enforcement Information Notice 85–101; Applicability of 10 CFR 21 to Consulting Firms Providing Training.

(e) Section 21.2, which sets forth the scope of Part 21 coverage has been revised to include Part 60 facilities.

The existing rule already applies to Part 60 licensees (as an entity licensed to possess, use, and/or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel) and to those entities that supply basic components for an activity licensed under Part 60. The proposed extension of Part 21 to organizations *that construct* geologic repositories would complete the Part 21 coverage by extending it to all the major activities or facilities licensed by the Commission.

Timeliness of Evaluations

Under existing § 21.21(b)(2), the initial notification of a defect must be made to the NRC within *two days* of the time a director or responsible officer obtains information on the existence of a reportable defect. However, the existing rule is silent concerning the time period between the discovery of a potential defect and the time when an evaluation of the potential defect should be completed and the NRC notified. Similarly, no deadline is established for when the director or responsible officer must be informed of a potentially reportable defect. The Commission is aware of a number of cases where an inordinate length of time passed between the initial discovery of a potential defect and when the Commission was informed. While no amendment is being proposed to set a time limit for evaluation of deviations, and informing directors or responsible corporate officers, and the NRC, in general, under most circumstances, 30 days is believed to be a reasonable time to evaluate deviations to determine if reportable defects exist. Should a more lengthy evaluation be required, it may indicate the need to report the potential defect.

Existing 10 CFR 50.55(e) (2) and (3) establish time frames only for the reporting of defects. Proposed § 50.55(e) would also require the holder of a construction permit to evaluate deviation within 30 days and extend initial notification of the Commission from 24 from hours to two days. The extension of the initial notification time from 24 hours to 2 days in proposed 10 CFR 50.55(e), provides the industry with more flexibility, while still allowing sufficient warning of potential safety problems. The use of the same initial notification period for both 10 CFR Part 21 and 10 CFR 50.55(e) is consistent with the objective of establishing uniform reporting time frames.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis of the proposed regulation. The analysis identifies and examines the costs and benefits of the proposed regulation and its alternatives. The draft analysis is avaiable for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusions 10 CFR 50.22(c) (1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

Public reporting burden for this collection of information is estimated to average 167 hours per 10 CFR Part 21 response and 28 hours per § 50.55(e) response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestion for reducing this burden to Records and Reports Management Branch, Division of Information Support Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Office of information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed revision to § 50.55(e) applies solely to the holders of construction permits issued under 10 CFR 50.23, none of which can be considered small entities. Although the proposed revision to Part 21 could potentially affect a substantial number of small entities (See NRC size standards published December 9, 1985, 50 FR 50241) who supply components to NRC licensees, the economic impact on these firms is expected to be slight. Approximately 80 percent of the 300 annual nuclear-power-plant-related Part 21 reports have in the past been submitted by licensees; the remaining 20 percent have been submitted by nonlicensed suppliers and vendors. Proposed § 21.2 eliminates duplicative reporting for those organizations subject to the defect reporting requirements, and therefore should reduce the economic impact on these organizations, including small businesses.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The size of their business and how the proposed regulations would result in significant economic burden upon them as compared to larger organizations in the same business community.

(b) How the proposed regulations could be modified to take into account their differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to

providing special advantages to any individuals or groups.

(e) How the propose regulations, as modified, would still adequately protect the public health and safety.

The comments may be submitted to the NRC as indicated under the ADDRESSES heading.

Backfit Analysis

The Commissions has determined that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 21 and 50.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under Secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2242 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 21.6, 21.21(a) and 21.31 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 21.21, 21.41 and 21.51 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 21.2 is revised to read as follows:

§ 21.2 Scope.

(a) The regulations in this part apply, except as specifically provided otherwise in Parts 31, 34, 35, 39, 40, 60, 61, 70, or 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the regulations in this chapter to possess, use, or transfer within the United States source material, byproduct material, special nuclear material, or spent fuel, or to construct, manufacture, possess, own, operate or transfer within the United States, any production or utilization facility or independent spent fuel storage installation, or a geologic repository for the disposal of high-level radioactive waste under Part 60 of this chapter; and to each director and responsible officer of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization, that constructs a production or utilization facility licensed for manufacture, construction, or operation pursuant to Part 50 of this chapter or an independent spent fuel storage installation for the storage of spent fuel licensed pursuant to Part 72 of this chapter, or a geologic repository for the disposal of high-level radioactive waste under Part 60 of this chapter; or who supplies basic components for a facility or activity licensed, other than for export, under Parts 30, 40, 50, 60, 61, 70, 71 or 72 of this chapter.

(b) For persons licensed to construct a facility under a construction permit issued under § 50.23 of this chapter, reporting defects under § 50.55(e) of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects under this part and the responsibility of individual directors and responsible officers of such licensees to report defects under Section 206 of the Energy Reorganization Act of 1974.

(c) For persons licensed to operate a nuclear power plant under Part 50 of this chapter, reporting defects under § 50.73 or § 73.71 of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects under this part and the responsibility of individual directors and responsible officers of such licensees to report defects under Section 206 of the Energy Reorganization Act of 1974.

(d) Nothing in these regulations should be deemed to preclude either an individual, a manufacturer, or a supplier of a commercial grade item (see § 21.3(a–1)) not subject to the regulations in this part from reporting to the Commission a known or suspected defect or failure to comply and, as authorized by law, the identity of anyone so reporting will be withheld from disclosure.

(e) NRC regional offices and headquarters will accept collect telephone calls from individuals who wish to speak to NRC representatives concerning nuclear safety-related problems. The location and telephone numbers of the five regions (answered during regular working hours), are listed in Appendix D to Part 20 of this chapter. The telephone number of the NRC Operations Center (answered 24 hours a day—including holidays) is (202) 951–0550.

3. In § 21.3 paragraphs (a)(3), (c) and (h) are revised to read as follows:

§ 21.3 Definitions.

* * * * *

(a) * * *

(3) In all cases, "basic component" includes safety related design, analysis, inspection, testing, quality assurance, fabrication, training, maintenance, replacement parts, or consulting services that are associated with the component hardware whether these services are performed by the component supplier or others.

* * * * *

(c) "Constructing" or "construction" means the design, manufacture, fabrication, placement, erection, installation, modification, inspection, or testing of a facility or activity which is subject to the regulations in this part and consulting services related to the facility or activity that are safety related.

* * * * *

(h) "Operating" or "operation" means the operation of a facility or the conduct of a licensed activity which is subject to the regulations in this part and consulting services related to operations that are safety related.

* * * * *

4. Section 21.5 is revised to read as follows:

§ 21.5 Communications.

Except where otherwise specified in this part, all written communications and reports concerning the regulations in this part should be addressed to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Additionally, if the communication is related to a nuclear power reactor, non-power reactor, or other utilization facility licensed under Part 50, a copy shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If the communication is related to an activity licensed under Part 50 such as a fuel reprocessing plant or other production facility, a copy of the communication shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington,

DC 20555. A copy of communications related to activities licensed under Parts 30, 31, 34, 35, 40, 60, 61, 70, 71, or 72 must be sent to the Director, Office of Nuclear Material Safety and Safeguards. In the case of a licensee, a copy shall also be sent to the appropriate Regional Administrator at the address specified in Appendix D to Part 20 of this chapter.

5. In § 21.21, paragraphs (b)(2) through (b)(4) are redesignated (b)(3) through (b)(5); new paragraph (b)(2) is added; and the section heading and paragraphs (a), (b)(1), (b)(3) and (c) are revised to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect and its evaluation

(a) Each individual, corporation, partnership, or other entity subject to the regulations in this part shall adopt appropriate procedures to—

(1) Evaluate deviations to identify defects as soon as practicable. If, during the evaluation period, the organization discovering the deviation determines that it does not have the capability to perform the evaluation, the organization shall notify the purchasers or affected licensees within five working days of this determination so that the purchasers or affected licensees may evaluate the deviation, pursuant to the applicable reporting regulation, and

(2) Ensure that a director or responsible officer is informed as soon as practicable, if the construction or operation of a facility or activity, or a basic component supplied for such facility or activity—

(i) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard, or

(ii) Contains a defect.

(b)(1) A director or responsible officer subject to the regulations of this part or a person designated under § 21.21(b)(5) shall notify the Commission when he or she obtains information reasonably indicating a failure to comply or a defect affecting—

(i) The construction or operation of a facility or an activity within the United States that is subject to the licensing requirements under Parts 30, 40, 50, 60, 61, 70, 71, or 72 of this chapter and that is within his or her organization's responsibility; or

(ii) A basic component that is within his or her organization's responsibility and is supplied for a facility or an activity within the United States that is subject to the licensing requirements under Parts 30, 40, 50, 60, 70, 71, or 72 of this chapter.

(2) The notification to NRC of a failure to comply or of a defect under paragraph (b)(1) of this section, is not required if the director or responsible officer has acutal knowledge that the Commision has been notified of the defect or the failure to comply.

(3) Notification required by paragraph (b)(1) of this section must be made as follows—

(i) Initial notification by telefax, which is the preferred method of notification, to the NRC Operations Center at 301–492–8187 or by telephone at 301–951–0550 within two days following receipt of information by the director or responsible corporate officer under paragraph (b)(1) of this section, on the identification of a defect or a failure to comply. Verification that the telefax has been received should be made by calling the NRC Operations Center.

(ii) Written notification to the NRC at the address specified in § 21.5 within 30 days following receipt of information by the director or responsible corporate officer under paragraph (a)(2) of this section, on the identification of a defect or a failure to comply.

* * * * *

(c) Individuals subject to this part may be required by the Commission to supply additional information related to a defect or failure to comply. Such Commission action to obtain additional information may be based on reports of defects from other reporting entities.

§ 21.41 [Removed]

6. Section 21.41 is removed.

7. Section 21.51 is revised to read as follows:

§ 21.51 Maintenance and inspection of records.

(a) Each individual, corporation, partnership, or other entity subject to the regulations in this part shall prepare and maintain records necessary to accomplish the purposes of this part, specifically—

(1) Retain evaluations of all deviations for a minimum of five years.

(2) Suppliers of basic components shall retain any notifications sent to purchasers and affected licensees for a minimum of five years.

(3) Suppliers of basic components shall retain a record of the purchasers of basic components for the lifetime of the basic component.

(b) Each individual, corporation, partnership, or other entity subject to the regulations in this part shall afford the Commission, at all reasonable times, the opportunity to inspect records pertaining to basic components that relate to the discovery, evaluation, and reporting of deviations and defects, including any advice given to purchasers or licensees on the placement, erection, installation, operation, maintenance, modification, or inspection of a basic component.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

8. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, and amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b) and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

9. Section 50.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 50.2 Definitions

* * * * *

"Basic component" means, for the purposes of § 50.55(e) of this chapter:

(1) When applied to nuclear power reactors, any plant structure, system, component, or part thereof necessary to ensure (i) the integrity of the reactor coolant pressure boundary, (ii) the capability to shut down the reactor and maintain it in a safe shutdown condition, or (iii) the capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 100.11 of this chapter.

(2) When applied to other types of facilities or portions of such facilities for

which construction permits are issued under § 50.23 of this chapter, a component, structure, system or part thereof that is directly procured by the construction permit holder for the facility subject to the regulations of this part and in which a defect could create a substantial safety hazard.

(3) In all cases, safety related design, analysis, inspection, testing, quality assurance, fabrication, training, maintenance, replacement parts, or consulting services that are associated with the component hardware, whether these services are performed by the component supplier or others.

* * * * *

"Defect" means, for the purposes of § 50.55(e) of this chapter:

(1) A deviation in a basic component delivered to a purchaser for use in a facility or activity subject to a construction permit under this part, if on the basis of an evaluation, the deviation could create a substantial safety hazard at any time throughout the expected lifetime of the facility, were it to remain uncorrected or,

(2) The installation, use, or operation of a basic component containing a defect as defined in paragraph (1) of this definition; or

(3) A deviation in a portion of a facility subject to the construction permit of this part provided the deviation could, on the basis of an evaluation, create a substantial safety hazard at any time throughout the expected lifetime of the facility, were it to remain uncorrected.

* * * * *

"Deviation" means, for the purposes of § 50.55(e) of this chapter, a departure from the technical, quality assurance, or quality control requirements defined in procurement documents, safety analysis report, construction permit, or other documents provided for basic components installed in a facility subject to the regulations of this part.

"Director" means, for the purposes of § 50.55(e) of this chapter, an individual, appointed or elected according to law, who is authorized to manage and direct the affairs of a corporation, partnership or other entity.

"Discovery" means, for the purposes of § 50.55(e) of this chapter, the first identification of a deviation by any individual within the organization.

* * * * *

"Evaluation" means, for the purposes of § 50.55(e) of this chapter, the process accomplished by or for a construction permit holder to determine whether a particular deviation could create a substantial safety hazard.

* * * * *

"Procurement document" means, for the purposes of § 50.55(e) of this chapter, a contract that defines the requirements which facilities or basic components must meet in order to be considered acceptable by the purchaser.

* * * * *

"Responsible officer" means, for the purposes of § 50.55(e) of this chapter, the president, vice-president, or other individual in the organization of a corporation, partnership, or other entity who is vested with executive authority over activities subject to this part.

* * * * *

"Substantial safety hazard" means, for the purposes of § 50.55(e) of this chapter, a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility of activity authorized by the construction permit issued under this part.

* * * * *

10. In § 50.55, paragraph (e) is revised to read as follow:

§ 50.55 Conditions of construction permits.

* * * * *

(e)(1) Each individual, corporation, partnership, or other entity holding a facility construction permit subject to this part shall adopt appropriate procedures to—

(i) Evaluate deviations as soon as practicable, and in all cases within 30 days discovery, in order to identify a reportable defect that could create a substantial safety hazard at any time throughout the expected lifetime of the plant were it to remain uncorrected.

(ii) Ensure that a director or responsible officer is informed as soon as practicable, and in all cases within the initial 30-day period allowed for evaluation of deviations pursuant to paragraph (e)(1)(i) of this section, if the construction of a facility or activity, or a basic component supplied for such facility or activity—

(A) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard, or

(B) Contains a defect.

(2) The holder of a facility construction permit subject to this part who obtains information reasonably indicating that the facility fails to comply with the Atomic Energy Act of 1954, as amended or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard shall notify the Commission through a director or responsible officer of the failure to comply.

(3) The holder of a facility construction permit subject to this part shall notify the Commission through a director or responsible officer if the holder obtains information reasonably indicating the existence of any defect found in construction or any defect found in the final design of a facility as approved and released for construction.

(4) This notification requirement applies to all defects regardless of whether extensive evaluation, redesign, or repair is required to conform to the criteria and bases stated in the safety analysis report or construction permit. Reporting under this section satisfies the responsibility of individual directors or responsible officers of holders of construction permits issued under § 50.23 of this chapter to report defects under Section 206 of the Energy Reorganization Act and under 10 CFR Part 21.

(5) The notification required by paragraph (e)(3) of this section must consist of—

(i) Initial notification by telefax, which is the preferred method of notification, to the NRC Operations Center at 301–492–8187 or by telephone at 301–951–0550 within two days following receipt of information by the director or responsible corporate officer under paragraph (e)(1)(ii) of this section, on the identification of a defect or a failure to comply. Verification that the telefax has been received should be made by calling the NRC Operations Center.

(ii) Written notification submitted to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate Regional Administrator at the address specified in Appendix D to Part 20 of this chapter, a copy to the appropriate NRC resident inspector within 30 days following receipt of information on the identification of a defect or failure to comply.

(iii) If insufficient information is available for a complete evaluation of a deviation or potential failure to comply within 30 days of discovery of the deviation, prepare and submit an interim report to the Commission that contains all available information, and a statement as to when a complete report will be filed. Submit the interim report within 30 days of discovery of the deviation.

(6) The written notification required by paragraphs (e)(5)(ii) and (iii) of this section must clearly indicate that the notification is being submitted under paragraph (e) of this section and include

the following information, to the extent known—

(i) Name and address of the individual or individuals informing the Commission.

(ii) Identification of the facility, the activity, or the basic component supplied for such facility or such activity within the United States which contains a defect or fails to comply.

(iii) Identification of the firm constructing the facility or supplying the basic component which fails to comply or contains a defect.

(iv) Nature of the defect or failure to comply and the safety hazard which is created or could be created by such defect or failure to comply.

(v) The date on which the information of such defect or failure to comply was obtained.

(vi) In the case of a basic component which contains a defect or fails to comply, the number and location of all such components in use at the facility subject to the regulations in this part.

(vii) The corrective action which has been, is being, or will be taken; the name of the individual or organization responsible for the action; and the length of time that has been or will be taken to complete the action.

(viii) Any advice related to the defect or failure to comply about the facility, activity, or basic component that has been, is being, or will be given to other entities.

(7) The holder of a construction permit shall prepare and maintain records necessary to accomplish the purposes of this section, specifically—

(i) Retain procurement documents, which define the requirements that facilities or basic components must meet in order to be considered acceptable, for the lifetime of the basic component.

(ii) Retain evaluations of all deviations for a minimum of five years.

(8) The requirements of this § 50.55(e) are deemed to be satisfied when the defect has been previously reported under Part 21 of this chapter or under § 50.73 of this part.

* * * * *

Dated at Rockville, MD, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-25592 Filed 11-3-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Part 785

Class Patent Waiver

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes a rule which would provide for a class waiver of the Government's rights in certain inventions made under contracts, grants, or cooperative agreements of DOE. The purpose of this class waiver is to maximize and expedite, to the extent permitted by law, the retention of rights to inventions made in the performance of federally-funded research and development contracts, grants, or cooperative agreements by the private sector. Generally, pursuant to 42 U.S.C. 2182 (1982) and 42 U.S.C. 5908 (1982), for contracts, grants, agreements or other arrangements with DOE for research, development or demonstration work, with entities other than small business or nonprofits, title in inventions vests in the Government, unless the Government waives its rights in conformity with the provisions of these statutes. This proposed rule provides for a class wiaver in two categories:

(1) A class advance waiver (i.e., waiver at the time of contracting) of the Government's rights in inventions arising from contracts with domestic large business contractors, other than management and operating contractors generally referred to as GOCOs; and

(2) A class waiver of the Government's rights in identified inventions arising from contracts with domestic large business contractors, including management and operating contractors.

The proposed class waiver is subject to requirements, limitations, terms and conditions as provided in the proposed rule, and is intended to be implemented by simplified procedures requiring contractor certification of compliance with the requirements, terms and conditions of the class waiver. Where the class waiver is not applicable, contractors may still seek patent waivers on a case-by-case basis in accordance with established practices.

DATES: Written comments must be received on or before January 9, 1989.

A public hearing will be held on December 13, 1988 at 9:00 a.m. Requests to present oral statements must be received no later than November 30, 1988.

ADDRESSES: Written comments (three copies) and requests to speak at a public hearing must be addressed to: Richard E. Constant, Assistant General Counsel for Patents, GC-42, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

The hearing will be held at DOE Headquarters, 1000 Independence Avenue, SW., Washington DC, Room 1E-245.

FOR FURTHER INFORMATION CONTACT: Richard A. Lambert, Office of Assistant General Counsel for Patents, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone (202) 586-2802.

SUPPLEMENTARY INFORMATION:

I. Background

Normally, for contracts, grants, agreements, or other arrangements with DOE for research, development or demonstration work with entities other than domestic small businesses or nonprofit organizations, title in inventions vests in the Government, pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2182 (1982)) and the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908 (1982)), unless the Government waives its rights in inventions in conformity with the provisions of these statutes. Title 35 U.S.C. 202 (1982) (Pub. L. 96-517, as amended by Pub. L. 98-620), generally permits domestic small business firms and domestic nonprofit organizations to elect to retain title in inventions made under funding agreements with the Federal Government. Accordingly, this notice concerns only domestic large, for profit, businesses, not covered by 35 U.S.C. 202, as to which the right to title to inventions is governed by the Atomic Energy and Nonnuclear Acts. subject to the guidance to agencies contained in the President's Memorandum on Government Patent Policy of February 18, 1983, as referenced in Executive Order 12591, dated April 10, 1987.

The Memorandum of Government Patent Policy directs that:

To the extent permitted by law, agency policy with respect to the disposition of any invention made in the performance of a federally-funded research and development contract, grant, or cooperative agreement

award shall be the same or substantially the same as applied to small business firms and nonprofit organizations under Chapter 38 of Title 35 of the United States Code.

With the overall goal of incorporating the results of the Department's research, development, and demonstration programs into the mainstream of American commerce consistent with the objectives of the President's patent policy and in accordance with the authority of 42 U.S.C. 2182 (1982) and 42 U.S.C. 5908 (1982), DOE proposes that it is in the best interests of the United States and the general public to grant a class waiver as provided in the proposed regulation.

The proposed rule provides for a class waiver in two categories:

(1) Class advance waiver of the Government's rights in inventions arising from contracts with domestic large business contractors other than Management and Operating Contractors.

(2) Class waiver of the Government's rights in identified inventions arising from contracts with domestic large business contractors including Management and Operating Contractors.

The Department reserves the right to grant additional class waivers as deemed appropriate in the public interest. Consideration was given to granting an additional class waiver covering inventions falling within certain exceptional circumstances technologies, which would have provided an exclusive license to recipients of funding agreements with domestic small businesses and nonprofit organizations for fields of uses outside the specified exceptional circumstances. However, the applicable class of inventions and potential waiver recipients is not deemed to be sufficiently broad to justify at this time the grant of such a class waiver. Requests for waiver of the Government's rights in such technologies may continue to be made, on a case-by-case basis, in accordance with established DOE waiver policies and procedures.

Certain areas in the national interest are excluded from the scope of these waivers. The exclusions are generally as follows: inventions arising under international agreements or treaties; weapons-related inventions; inventions made under agreements funded by DOE's naval nuclear propulsion program; classified or sensitive inventions; uranium enrichment inventions; inventions relating to storage and disposal of civilian high-level nuclear waste or spent nuclear fuel; and inventions falling within other class waivers granted to third parties by DOE.

Inventions arising under international agreements or treaties are excluded from the class waiver in order to avoid conflict with invention rights provisions of such agreements or treaties.

Weapons-related inventions are excluded from the class waivers for reasons involving nonproliferation of weapons, national security, conflicts of interest, management requirements of DOE's unique contractor operated weapons laboratories and in order that DOE may ensure prosecution of patent applications or statutory invention recordings on selected inventions in which the Government has a strong interest in establishing license rights.

Classified and sensitive inventions are also excluded from the scope of the class waivers for the reasons noted above for weapons related inventions. In addition, the restricted status of such inventions usually continues for many years, during which any present plans of a contractor to commercialize the inventions are subject to change.

In the case of uranium enrichment, the technology at present is exclusively under Government control with the Government being the only legal customer for the technology. Therefore, the rationale for establishing private incentives is lessened if not eliminated. Furthermore, DOE currently has a requirement to preserve the transferability of this technology to the private sector. In order to retain a transferable package of intellectual property rights, DOE retains title in this area.

Regarding technology for storage and disposal of civilian high-level nuclear waste or spent nuclear fuel, since the program is funded through special fees levied on the utility industry, Government retention of patent rights preserves the Government's flexibility to grant licenses to utilities as appropriate, or to solicit utility industry participation in rights allocations. Further, since the Government has a statutory mandate to develop the technology to the point of commercialization, incentives inherent in the patent system are not the driving mechanism to promote development of this technology.

However, for one of the excluded technologies, i.e., storage and disposal of civilian high-level nuclear waste or spent nuclear fuel and possibly for excluded technologies that may in the future be so designated, a contractor may elect to retain an exclusive license in all fields of use outside the excluded technology where the contractor can demonstrate that the invention has such an outside use, and specifically identifies such use as one it will commercialize within three years. An example of such an outside use is use of nuclear waste disposal technology for disposal of nonradioactive toxic chemical wastes.

Inventions covered by existing or future class waivers to third parties, e.g., DOE's class waivers covering third party use of DOE facilities, are excluded from the class waiver covering identified inventions for large business contractors, in view of the overriding DOE interest in promoting third party use of such facilities and to avoid invention rights conflicts that might arise from conflicting class waiver provisions.

In addition, similar to DOE's authority to declare "exceptional circumstances" under 35 U.S.C. 202(a) the Secretary of Energy reserves the right to designate further exclusions to this class waiver, as deemed necessary in the national interest.

Of course, contractors may request a waiver of rights to an invention, including those excluded from the scope of this class patent waiver, pursuant to DOE's existing waiver policies and procedures.

Implementation of the class waiver proposed herein is intended to be made using simplified procedures requiring certifications by contractors regarding matters such as its intent to commercialize a particular invention, including submission of general plans for commercialization, (itself or through licensees) within three years (with a right to seek extension of such three-year period, in two year intervals, if contractor can demonstrate to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention), and its willingness to bear patent costs, followed by review and certification by DOE that the conditions of the particular class waiver have been made, e.g., a cost-sharing of 20% (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs). The proposed class waiver will result in significant reductions in the paperwork burdens imposed on contractors seeking a DOE patent waiver as compared to current policies, which require a waiver petitioner to submit considerably greater amounts of information in support of a waiver request.

(1) Class Advance Waiver

Subject to exclusions as noted above, the class advance waiver applies:

1. To contractors which are domestic large businesses (i.e. not qualifying as small businesses or nonprofit organizations under 35 U.S.C. 202 (1982) engaged in research, development, or demonstration work under a DOE contract, except contracts for management or operation of contractor-operated research, production or weapons facilities (GOCO);

2. Where the contract requires 20% cost sharing by the contractor (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs);

3. Where the contractor agrees to commercialize any elected invention itself or through its licensee(s) within a three-year time period from the date of disclosure of the invention to DOE, subject to extension of the time period for commercialization, in two year intervals, so long as contractor can demonstrate to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention; and

4. Where DOE certifies the application of the waiver to the contract.

Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908 (1982)), in establishing the patent waiver authority, provided four objectives that the Secretary or his designee is to seek to accomplish in making waiver determinations. In addition, eleven specific factors are to be considered at the time of contracting in making such determinations. DOE has harmonized these provisions with section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182 (1982) so that waivers are evaluated under these criteria regardless of the technology under which an invention is made. Within these statutory structures, DOE's waiver policy has been used flexibily. DOE has granted many advance waivers both to large corporations and, prior to the passage of The Patent and Trademark Amendments of 1980, Pub. L. 96–517, section 7, 94 Stat. 3016, to small businesses and universities. Certain consistent fact patterns have formed the basis for granting advance waivers to large businesses on a case-by-case evaluation. These patterns are utilized in this class advance waiver in accordance with the statutes.

DOE has generally granted waivers to large business contractors who cost share a minimum of 20% (not including waived fee) of the contract costs. This level of cost sharing has evolved over several years of waiver experience and has been shown to be an excellent indication of whether a research project fits within a corporations' long range plans and of the corporate interest in commercializing the technology which is the subject of the contract. Cost sharing establishes a corporate commitment by the contractor to commercialize the technology. Establishing a 20% cost sharing standard for this class waiver recognizes the experience gained from previous waivers and will simplify the process by which large business contractors can obtain advance waivers. Further, DOE has found having 20% cost sharing effectively extends its ability to carry out its programmatic mission. The 20% cost sharing requirement has been found to be an effective tool to combine corporation research interest with Government programs, thereby leveraging Government research funds and providing technology transfer into commercial application. This promotes the commercialization of inventions made under these contracts and serves to make the benefits of DOE's energy research, development, and demonstration programs widely available to the public in the shortest practicable time. Over DOE's several years of experience using 20% cost-sharing as a prime consideration for grant of an advance patent waiver, we are not aware of any prospective contractor declining to contract with DOE as a result of 20% cost-share requirement for an advance waiver. To provide flexibility, however, the 20% cost sharing required for this class waiver may be changed to another level if it is determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs. The public is specifically invited to provide comments regarding the appropriateness of the 20% cost-sharing level as a precondition to a class advance waiver. If any member of the public wishes to comment on this point, we would appreciate his or her views on the appropriate cost-share level for an advance waiver, with reasons therefor.

The other requirement of this class waiver, that the contractor agree to commercialize any elected invention (itself or through its licensees) within a three year time period (subject to extension if contractor can show that it or its licensee(s) is actively pursuing commercialization of the invention) serves to foster and assure expeditious pursuit of commercial utilization of waived inventions by the contractor. Three years appears to be a reasonable time period for an entity acting in good faith to proceed to effect commercialization of a typical invention. For those inventions which may require longer time periods for commercialization in view of, for example, the need for extensive development efforts prior to effecting commercialization, the three year time period may be extended, in two year intervals, so long as contractor can demonstrate to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention.

DOE's ten years of experience in granting advance waivers to contractors who have cost shared has resulted in no indication to DOE of an adverse impact on competition. No such adverse impact is foreseen from this class waiver. Waived inventions will be subject to a license to the Government and DOE will have the right to require periodic reports on the contractor's utilization, or efforts at obtaining utilization, of the invention. Further as a condition of this waiver, DOE shall have the right to exercise its march-in rights and require the contractor to license a waived invention if DOE determines that the contractor is not making reasonable efforts to utilize the invention, or alternatively, if the practice of the invention by the contractor or its assignee or licensee has tended substantially to lessen competition or result in undue concentration in any line of commerce to which the technology of the invention relates. An additional march-in right provides for automatic termination of the waiver as it relates to a particular invention and reversion of title in the invention to the Government if the invention is not commercialized within three years (subject however to extension of the three-year period for commercialization if the contractor can demonstrate to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention). Concomitant with this class advance waiver, DOE is also granting a class waiver to identified inventions to large business contractors, including management and operating contractors of DOE Government-owned facilities (GOCOs), where the contractor agrees to commercialize the invention, either itself or through licensees within a three-year time period. These two categories complement each other to permit the large business contractor, including GOCO contractors, to acquire title to all inventions (except for those imbued with the national interest as set forth herein) in which the contactor has plans for commercialization, either itself or through licensees. This class waiver will significantly act to elicit private risk capital and promote commercial utilization of inventions made under DOE's research, development, and

demonstration programs and thereby make the benefits of these programs widely available to the public in the shortest practicable time.

(2) Class Waiver of Identified Inventions

Subject to exceptions as noted above, the class waiver of patent rights to identified inventions applies to inventions made by contractors who are domestic large businesses (i.e., entities not qualifying as small business firms or nonprofit organizations under 35 U.S.C. 202 (1982) engaged in research, development, or demonstration work under a DOE funding agreement, including contractors for the management and operation of DOE research, production or weapons facilities (GOCO), where:

(1) The contractor agrees to commercialize the invention itself or through its licensees within a three-year time period from the date of waiver is effective as to the invention. Three years appears to be a reasonable time period for an entity acting in good faith to proceed to effect commercialization of a typical invention. The three-year time period for commercialization is subject to extension, in two-year intervals, so long as contractor demonstrates to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention. For purposes of this regulation, "commercialize" shall mean to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms;

(2) The contractor reports the invention and elects to retain the rights therein within the times provided in the contract for reporting inventions and requesting greater rights, respectively (however, normally the waiver will not apply to inventions which DOE has advertised as being available for licensing) and agrees to file, prosecute, and maintain any and all patent applications and patents on the invention at its own expense, unless, in the case of GOCO contractors, special contractual provisions are negotiated;

(3) The invention is not, at the time of the request for waiver, developed to the point of commercialization by the Government and further development of the invention is not being funded and is not intended to be funded by the Government. Among DOE's statutory considerations for waivers are consideration of the extent to which the Government intends to further develop to the point of commercial utilization the results of the contract effort, and consideration of the extent to which a waiver is a reasonable and necessary incentive to call forth private risk capital for the development and commercialization of the invention. Limiting the class waiver to inventions not being funded and not intended to be funded by the Government encourages expenditure of private risk capital for development and commercialization of an invention, and affords appropriate weight to the foregoing considerations. For purposes of this waiver, an invention is not further funded if Government funding is not being, and is not intended to be, directed at the further development of the invention or the enhancement of the invention in a manner beneficial to commercial applications of the invention. This does not include insignificant amounts of fnding for minor modification of the invention or use of the invention incidental to other work. On the other hand, further funding would clearly exist where work is directed toward actually reducing an invention to practice or developing the invention in a manner which improves its performance or enhances its value in commercial applications. To implement this class waiver, the contractor is required to certify that the invention has not been developed to the point of commercialization and that, to the best of contractor's knowledge and belief, further development of the invention is not being funded and is not intended to be funded by the Government. Since this information is generally within the knowledge of the requestor, certifying as to such matters should present no undue burden on the contractor; and

(4) The waiver is certified by DOE to be applicable to the invention.

For the purposes of this waiver, contractor means either a prime contractor or a subcontractor. The waiver does not give a prime contractor or subcontractor rights in the other's inventions.

Section 9 of the Federal Non-nuclear Energy Research and Development Act of 1974, 42 U.S.C. 5908 (1982), in establishing the patent waiver authority, provided four objective that the Secretary or his designee is to seek to accomplish in making waiver determinations. In addition, specific statutory factors are to be considered in making these determinations with respect to identified inventions. DOE has harmonized these provisions with section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182 (1982), so that waivers are evaluated under these criteria regardless of the technology under which an invention is made. DOE has granted many identified invention waivers over the past ten years and the experience therefrom is applicable to the present class waiver. In general, large business contractors are selected for a research, development, or demonstration contract because of their technical expertise in the subject matter of the contract. Providing the contractor with title to inventions made under DOE contracts should encourage a commitment to commercialization and foster the application of private risk capital for development and manufacture of inventions.

Regarding GOCO contractors, the Department of Energy (DOE), unlike most other Government agencies, employs contractors to manage and operate certain of its major research, production and weapons facilities. The following principles, as set forth by the Secretary of Energy, provide the policy framework for these management and operating (GOCO) contracts:

(1) The Government retains responsibility for overall program management and project technical direction while the contractor is responsible for the day-to-day management of the work;

(2) The Government and contractor have an identity of interest in the mission being pursued;

(3) The parties intend a long-term close relationship;

(4) The Government assumes virtually all financial risk;

(5) The contractor is hired to manage;

(6) The contractor broadly supports the performance of Government functions by executing programs of national significance on behalf of the Government; and

(7) The Government ultimately is responsible for security, health and safety and the proper use of public funds.

These contractor-operated Government facilities have for some forty years benefited DOE and its predecessor agencies in carrying out agency research, development, and demonstration (R,D&D) programs. The GOCO facilities have, in great measure, had a remarkable record of scientific and technical success. This success is due, in part, to the unique contractual relationship that exists between DOE and its GOCOs; viz., the dedication of both technical and administrative skills of a private organization to a significant

Federal mission in a close, long-term, cooperative relationship.

Most of the inventions made under research and development activities at the GOCO facilities require additional development before they are available in the commercial marketplace. This is because many of the GOCO inventions are founded upon basic or advanced research. Additionally, many of these inventions are conceptual in nature and are on a labortory or proof-of-principle scale. Scale-up to a commercial size demonstration of the inventive concept is often a prerequisite to negotiating royalty-bearing licenses. Finally, many of the inventions arising out of DOE's energy research will require substantial capital in order to translate the invention into commercial reality; such costs, for example, include further engineering, design, start-up and marketing.

A class waiver of the Government's rights in identified inventions as set forth herein will create sufficient exclusive rights in these inventions to bring forth private risk capital expeditiously to promote and move the technology into the commercial marketplace and thereby make the benefits of DOE's programs widely available to the public in the shortest practicable time. This would satisfy the broad objectives of section 9 of the Federal Non-nuclear Act, 42 U.S.C. 5908 (1982), while being in keeping with the ultimate objective of the Presidential Memorandum.

Furthermore, the grant of a class waiver of identified inventions as set forth herein would provide an effective mechanism for achieving technology transfer of energy-related technology into the mainstream of American commerce by bringing a focused attention and stronger commitment on the part of the Department's GOCO contractors to this mission objective. Permitting these contractors to retain title to a broad range of important energy-related technologies should enhance the technology transfer initiative of the Department.

It is recognized that the various GOCO contractors have diverse interests and needs requiring flexibility in the implementation of this class waiver. Therefore, approaches which ensure that the needs of each GOCO contractor are met as well as serving the best interests of the United States and the general public must be tailored for each GOCO contract. Factors to be considered for such alternative approaches may include, for example, the willingness of the GOCO contractor to use all or a portion of royalties received from licensing of waived inventions for further research at the facility, and the willingness to assign over title to waived inventions to a successor contractor upon termination of the contract. Adequate provisions must be included to protect against a potential contractor conflict of interest as well, commensurate with the allocation of patent ownership and use of royalty income. Appropriate contractual provisions reflecting these concerns must be approved by the General Counsel or designee, and must be included in each GOCO contract in order for the GOCO contractor to qualify for this class waiver.

Granting this waiver should have no adverse impact on competition. Making title to inventions available to the contractor in technologies in which the contractor has plans for commercialization, either itself or through licensees, is consistent with DOE's past practices and will not only ensure the commercialization of the invention but enhance competition. The waiver will be subject to a license to the Government and DOE will have the right to require periodic reports of the contractor's utilization, or efforts at obtaining utilization, of the invention. Further as a condition of this waiver, DOE shall have the right to exercise its march-in rights and require the contractor to license a waived invention if DOE determines that the contractor is not making reasonable efforts to utilize the invention, or alternatively, if the practice of the invention by the contractor or its assignee or licensee has tended substantially to lessen competition or result in undue concentration in any line of commerce to which the technology of the invention relates. In addition, the waiver is automatically terminated if the contractor cannot demonstrate to the satisfaction of DOE that the invention has been commercialized within three-years of the disclosure of the invention to DOE, or if no extension of the three year period for commercialization is obtained. Concomitant with this waiver to identified inventions and in accordance with the above statutory authority, DOE is also granting a class advance waiver to domestic large business contractors that are not management or operating contractors, where the contractor agrees to cost share 20% of the contract effort (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs). These two categories complement each other to permit the large business contractor to acquire title to all inventions (except for those inbued with the national interest as set forth herein) in which the contractor has a commitment to commercialization. These two categories will significantly act to elicit private risk capital and promote commercial utilization of inventions made under DOE's research, development, and demonstration programs and management and operating contracts and thereby make the benefits of these programs widely available to the public in the shortest practicable time.

Certain inventions made by the contractor prior to the grant of this class waiver may be important to the contractor's commercialization efforts. While identified waiver requests could be made by the contractor for greater rights, on each of these inventions, it is desirable to reduce the paper work associated with processing waiver requests for these inventions. Additionally, expedited waiver processing would permit the earliest rapid start-up of commercialization and technology transfer programs by contractors by insuring a supply of inventions for these activities immediately upon the grant of the class waiver. Accordingly, the scope of this waiver shall also include inventions made by contractor (or if a GOCO, its predecessor) on which a timely filed identified waiver request is pending as of the effective date of this waiver. As noted earlier, the waiver shall normally not apply to any invention which DOE has advertised as being available for licensing.

As a condition of the waiver, the contractor shall provide to DOE on a DOE-approved form a duly-executed instrument fully confirmatory of all rights retained by the Government for each invention as to which the contractor retains rights pursuant to this waiver. The contractor will bear the costs of patent prosecution and maintenance unless, for a GOCO contractor, special contractual provisions are negotiated.

The waiver to the identified class of inventions is in the best interests of the United States and the general public, in accordance with the objectives to be obtained and the determinations to be made under DOE statutory waiver policy. It should encourage the participation of contractors in DOE programs and provide for the commercialization of DOE developed technology in the shortest practicable time.

Accordingly, in view of the statutory objectives to be obtained and the factors to be considered under DOE's statutory waiver policy, all of which have been considered, it is proposed

that a waiver of the class of inventions identified above and under the situations described above will best serve the interests of the United States and the general public.

II Section-by-Section Discussion of Proposed Rule

Section 785.1 of the regulation defines the scope of the class waiver of the Government's U.S. and foreign patent rights in inventions arising from contracts with domestic large business contractors. Section 785.1(b) is directed to a class advance waiver. Generally, this class advance waiver is applicable to recipients of DOE contracts (including grants and cooperative agreements) with domestic large businesses, (other than GOCO contractors) where the contract requires 20% cost sharing by the contractor (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs), and where the contractor agrees to commercialize an elected invention (itself or through licensees) within a three year time period (subject to extension so long as contractor can demonstrate that it or its licensee(s) is actively pursuing commercialization of the invention).

Section 785.1(c) is directed to a class identified invention waiver, which generally applies to large business contractors, including GOCO contractors. The waiver is applicable generally to inventions which the contractor agrees to commercialize within a three-year time period, subject to extension as above, when such inventions have not been developed to the point of commercialization by the Government, and there is no further funding, nor plans for further funding of the invention by the Government.

Section 785.2 provides for exclusion of certain technologies from the class waiver in the national interest. Presently, excluded technologies include uranium enrichment technology, storage and disposal of civilian high-level nuclear waste and spent nuclear fuel technology, classified inventions, and inventions which are sensitive under section 148 of the Atomic Energy Act of 1954, 42 U.S.C. 2168 (1982). In addition, contracts and inventions under international agreements or treaties in existence or to be entered into in the future are also excluded from this waiver, as are all contracts and inventions funded by DOE's naval nuclear propulsion programs or by DOE's weapons programs. However, for inventions related to storage and disposal of civilian high-level nuclear waste and spent nuclear fuel, the contractor may elect to retain an exclusive license in fields of use outside such technology where the contractor specifically identifies such fields of use as uses it will commercialize within three years.

Section 785.3 addresses terms and conditions for class waivers, including a paid-up Government license, march-in rights, and requirements that patent costs be undertaken by the contractor. Section 785.4 provides for implementation of the class waiver by simplified procedures requiring certification by the contractor and DOE as to applicabiliy of the class waiver.

III. Review Under Executive Order 12291

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether a rule is a "major rule," as defined by section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for each major rule. DOE has determined that the proposed rule does not meet the E.O. 12291 definition of a major rule as one likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

Pursuant to section 3(c)(3) of E.O. 12291 these rules were submitted to the Director of OMB for a ten-day review. The Director has concluded his review under that Executive Order.

IV. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612 (1982), requires, in part, that an agency prepare an initial regulatory flexibility analysis for any rule, unless it determines that the rule will not have a "significant economic impact" on a substantial number of small entities. The proposed rule concerns class patent waivers directed primarily at entities that are not small businesses, since there is separate statutory authority governing disposition of invention rights of Government contractors that are small businesses. Therefore, as required by section 603(b), DOE certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

V. Review Under National Environmental Policy Act

DOE has determined that the proposed rule is not a major Federal action with significant environmental impact and does not affect the quality of the environment. Consequently, the proposed rule does not require preparation of an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (1982).

VI. Review Under Paperwork Reduction Act

The reporting requirements contained in this proposed rule have been submitted to OMB for approval under the Paperwork Reduction Act.

VII. Federalism

Executive Order (EO) 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and States, or the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then EO 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The principal impact of today's regulation, when finalized, will be to speed up waivers of government patent rights to private entities. The regulation will not have any effect on the States, the relationship between the States and Federal government, or the distribution of power and responsibilities among various levels of government.

VIII. Opportunities for Public Participation

Section 501(c)(1) of the Department of Energy Organization Act, 42 U.S.C. 7191(c)(1) (1982), provides that if the Secretary determines that a substantial issue of fact or law exists or that a proposed rule is likely to have substantial impact on the Nation's economy or on large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided. To preclude any issue in this regard, such an opportunity will be provided.

A. Written comment procedures. Interested parties are invited to participate in this rulemaking by submitting views, data, or arguments with respect to the proposal set forth in this notice to Richard E. Constant, Assistant General Counsel for Patents,

Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The comments and the outside of the envelope should be identified with the designation, "Docket No. GC88–2." Three copies of the comments should be submitted.

All comments received by January 9, 1989 and other relevant information will be considered by DOE before final action is taken regarding the proposed regulations.

B. Public hearing. DOE has determined to hold one public hearing on this proposal. The time and place of the public hearing is indicated at the beginning of this notice.

Any person who has an interest in the proposed rulemaking or who is a representative of a group of persons that has an interest in this rulemaking may make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address given at the beginning of the preamble and must be received by the date specified at the beginning of this notice. Requests may be hand-delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Requests should be marked as for written comments, with the additional notation "Request to Speak."

The person making the request should briefly describe the interest concerned and, if appropriate, state why that person is a proper representative of a group with such an interest, give a concise summary of the proposed oral presentation, and provide a phone number where the person or group may be contacted through January 9, 1989.

Each person selected to be heard at the public hearing will be notified by December 6, 1988. Witnesses presenting oral testimony must bring seven copies of their statements to the hearing.

In the event any person wishing to testify cannot provide seven copies, alternative arrangements can be made with the hearing coordinator in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling (202) 586–2802.

C. Conduct of hearing. DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation shall be limited to 20 minutes.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements at the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person wishing to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any additional procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 1–E–152, 1000 Independence Avenue, SW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Any person may purchase a copy of the transcript from the court reporter.

The public hearing may be cancelled if no public testimony is scheduled in advance. In the event the hearing is cancelled, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register.**

List of Subjects in 10 CFR Part 785

Inventions, Licenses, Patents and waivers.

In consideration of the foregoing, Part 785 of Title 10 of the Code of Federal Regulations is proposed to be added as set forth below.

Issued in Washington, DC, October 28, 1988.

Eric J. Fygi,

Acting General Counsel.

PART 785—CLASS PATENT WAIVER

Sec.

Authority: Department of Energy Organization Act, section 301, 42 U.S.C. 7151 (1982); Federal Nonnuclear Energy Research and Development Act of 1974, section 9, 42 U.S.C. 5908 (1982); Atomic Energy Act of 1954, section 152, 42 U.S.C. 2182 (1982); President's Memorandum on Government Patent Policy (1983).

§ 785.1 Scope of waiver.

(a) The Department of Energy, hereinafter "DOE," waives its rights under section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182 (1982), and section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. 5903 (1982), subject to the limitations and provisions contained herein, (1) in advance, with respect to all inventions and discoveries arising from certain contracts as specified herein, including grants and cooperative agreements, with domestic large business contractors other than Management and Operating Contractors (as defined in 48 CFR 17.601) (hereinafter M&O contractors), and (2) with respect to identified inventions arising from contracts, grants, and cooperative agreements, with domestic large business contractors, including M&O contractors.

(b) The class advance waiver applies to contractors which are domestic large businesses (i.e., not qualifying as small businesses or nonprofit organizations under 35 U.S.C. 202 (1982) engaged in research, development, or demonstration work under a DOE contract, except contracts for management and operation of contractor-operated research, production or weapons facilities, where:

(1) The contract requires 20% cost sharing by the participant (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs);

(2) The contractor agrees to commercialize any elected invention, itself or through its licensees, within a three year time period from the date of disclosure of the invention to DOE, subject to extension of the time period for commercialization, in two year intervals, so long as contractor demonstrates to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention. For purposes of this regulation, "commercialize" shall mean to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system, and, in each case under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms; and

(3) DOE, upon review of the contract and relevant facts, certifies that the wavier applies to the contract.

(c) The class identifed invention waiver applies to inventions made by contractors who are domestic large businesses (i.e. not qualifying as small businesses or nonprofit organizations under 35 U.S.C. 202 (1982)) engaged in research, development or demonstration work under a DOE contract, including a contract for management and operation (M&O contract) of a DOE research, production or weapons facility, where:

(1) The contractor agrees to commercialize the invention itself or through its licensees within a three year time period from the time the waiver is effective as to the invention, subject to extension of the time period from commercialization, in two year intervals, so long as contractor demonstrates to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention;

(2) The contractor reports the invention and elects to retain the rights therein, within the times provided in the contract for reporting inventions and requesting greater rights, and agrees to file, prosecute, and maintain any and all patent applications and patents on the invention at its own expense;

(3) The invention is not, at the time of the request for waiver, developed to the point of commercialization by the Government and the Government is not funding further development of the invention and has no intentions for further funding of the invention; and

(4) Upon review of the invention and relevant facts, DOE certifies the waiver is applicable to the invention.

(d) In order to expedite processing of previously filed waiver requests, the scope of the identified invention waiver shall also include inventions made by the contractor (or, in the case of a Management and Operating Contractor, its predecessor) on which a timely filed identified invention waiver request in accordance with DOE's existing patent waiver regulations is pending as of the effective date of this waiver. However, the class waiver shall normally not apply to any invention which DOE has previously advertised as being available for licensing.

(e) Certain technologies, listed in § 785.2, have been excluded from the scope of this waiver in the national interest. However, with respect to inventions falling within the limitation specified in § 785.2(d), or the limitation specified in § 785.2(j) if so authorized by the Secretary, when the contractor demonstrates that the invention has a commercial use falling outside said limitation the contractor may elect to retain an exclusive license. The exclusive license will apply to all fields of use outside the said limitation where such fields of use are specifically identified by the contractor as uses it intends to commercialize within three years from the date of disclosure of the invention of DOE, (subject to extension of the time period for commercialization, in two year intervals, so long as contractor demonstrates to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention in such field of use) and will include the right to grant sublicenses of the same scope. The exclusive license shall be subject to the same requirements, procedures, terms and conditions as provided herein for application of the waiver (including the royalty free right of the Government to practice inventions by or on behalf of the Government in such fields of use), except that the Government may file a patent application thereon, and retain title to any resulting patent. Upon the contractor's request, DOE may permit the contractor to file a patent application on behalf of the Government. Where the contractor requests the right to file a patent application on behalf of the Government, the contractor normally must bear the cost of preparing and prosecuting the patent application and maintaining any resulting patent at its private expense. Upon timely request by the contractor, DOE will make a determination as to whether an invention reported in accordance with the contract is covered by the limitations specified in § 785.2.

(f) DOE reserves the right to change the scope of rights available to contractors in later-identified exceptions under § 785.2(j).

(g) For purposes of this waiver, contractor means either a prime contractor or a subcontractor. The waiver does not give a prime contractor or subcontractor rights in the other's inventions. The waiver shall not affect any future waiver or any waiver previously granted. The advance waiver shall not apply to any contract which has been modified to reduce the cost share below 20% (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs).

§ 785.2 Limitations.

The class waiver of this regulation does not include:

(a) Contracts and inventions under international agreements or treaties in existence or to be entered into in the future;

(b) Contracts and inventions funded by DOE's naval nuclear propulsion program or by DOE's weapons programs;

(c) Contracts and inventions relating to uranium enrichment (including isotope separation);

(d) Contracts and inventions relating to storage and disposal of civilian high level nuclear waste or spent nuclear fuel;

(e) Contracts and inventions relating to subject matter that is classified, or sensitive under section 148 of the Atomic Energy Act of 1954, 42 U.S.C. 2168 (1982);

(f) For identified invention waivers, any weapons related inventions;

(g) For identified invention waivers, inventions that occur under or are related to DOE's weapons related programs being conducted under contracts for the management and operation of facilities primarily dedicated to those programs;

(h) For identified invention waivers, inventions that are made under contracts for the management and operation of facilities primarily dedicated to naval nuclear propulsion or defense program production facilities;

(i) For identified invention waivers, those inventions covered by existing or future class waivers granted to third parties by DOE, e.g. the "work for others" class waiver;

(j) Any further exceptions that may, in the national interest, be designated by the Secretary in the future.

§ 785.3 Terms and conditions.

(a) The class advance waiver is conditioned upon the requesting contractor's accepting a Patent Rights clause in accordance with the Federal Acquisition Regulations and any applicable DOE regulations, as modified by DOE for any designated exceptions, including a paid-up Government license and march-in rights; utilization reporting requirements; a requirement of automatic termination of the waiver as it applies to a specific invention and reversion of title to the Government if the contractor cannot demonstrate to the satisfaction of DOE that it or its licensee(s) has commercialized the invention within these years from the date of disclosure of the invention to DOE, or obtained an extension to such three-year period for commercialization; a requirement that the contractor license

a waived invention if the practice of the invention by the contractor or its assignee or licensee has tended substantially to lessen competition or result in undue concentration in any line of commerce to which the technology of the invention relates; a requirement that prosecution and maintenance of an elected invention shall be at the sole expense of the contractor, regardless of any present or future interest that the U.S. Government may retain, so long as the contractor desires to retain title to the invention; and a requirement that the contractor shall provide DOE on a DOE-approved form a duly executed instrument fully confirmatory of all rights retained by the Government for each invention as to which the contractor retains rights pursuant to this waiver.

(b) The identified invention class waiver is conditioned upon the electing contractor's providing DOE on a DOE-approved form a duly executed instrument fully confirmatory of all rights retained by the Government, similar to the rights enumerated in § 785.3(a), for each invention in which the contractor retains rights pursuant to this waiver. In addition, for contracts for Management and Operation of Government Facilities, appropriate contractual provisions reflecting terms of implementation of this waiver must be approved by the General Counsel or designee, and must be included in each contract for the contractor to qualify for this class waiver. Such provisions may include clauses addressing, for example, conflict of interest matters, disposition of royalties, and willingness to assign title to waived inventions to a successor contractor. Unless special contractual provisions are negotiated, the contractor will normally bear the costs of patent prosecution and maintenance.

§ 785.4 Procedures.

(a) For an advance waiver, implementation of this class waiver is to be by a simple procedure which requires (1) a written request for an advance waiver by a contractor; (2) certification by the contractor regarding its intent to commercialize any elected invention itself or through its licensee(s) within three years from the date of disclosure of the invention to DOE, including a general statement of contractor's plans and intentions to so commercialize; and (3) certification by the contractor that it will bear the costs of patent prosecution and maintenance of waived inventions at its private expense.

(b) For an identified invention waiver, implementation of this class waiver is to be a simple procedure which requires (1) the contractor's reporting the invention with an election to retain rights in accordance with the class waiver (such election is to be within the time for requesting a waiver as provided in the contract and should identify the fields of use for which rights are requested if the invention falls within the scope of limitation § 785.2(d), or § 785.2(j) if applicable; (2) certification by the contractor that to the best of its knowledge the invention does not fall within international agreements or treaties of the U.S. Government; (3) certification by the contractor regarding its intent to commercialize the invention itself or through its licensee(s) within three years from the time this waiver is effective as to the invention, including a general statement regarding contractor's plans and intentions to so commercialize; (4) if the contract involves classified subject matter, certification by the contractors as to whether the invention is classified, or sensitive under section 148 of the Atomic Energy Act of 1954, 42 U.S.C. 2168 (1982); (5) certification by the contractor that the invention has not been developed to the point of commercialization and that to the best of contractor's knowledge and belief, further development of the invention is not being funded and is not intended to be funded by the Government; and (6) certification by the contractor that it will bear the cost of prosecuting and maintaining any patent applications or patents on the invention at its private expense, unless, if a Management and Operating Contractor of a Government facility, otherwise approved by the General Counsel or designee.

(c) For either an advance or identified waiver, the General Counsel or designee must review and certify as to whether the conditions of the waiver have been met. This includes, for an advance waiver, certification of meeting the requirement of 20% cost sharing (not including any waived fee) or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs or, for an identified waiver, certification that the waiver is applicable to the reported invention. This function may be delegated to DOE patent counsel assisting the procuring activity under the direction of the General Counsel or designee.

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BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-33-AD]

Airworthiness Directives; DORNIER Model Do-28 D-1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to DORNIER Model Do-28 D-1 airplanes, which would require a check of the location and relocation, if necessary, of the installed Station Guide Line. The Center of Gravity (C.G.) Station Guide Line has been incorrectly installed on some Do-28 D-1 airplanes, which if used to determine the airplane balance, may result in the airplane being loaded forward or aft of the C.G. limits. Operations of the airplane outside it's design C.G. envelope could cause the loss of control of the airplane. This action would preclude use of an incorrect location reference.

DATES: Comments must be received on or before January 9, 1989.

ADDRESSES: Dornier Service Bulletin (S/B No. 1121-1703, dated may 20, 1988, applicable to this AD may be obtained from Dornier GmbH, D-8000 Munchen 66, Post Office Box 2160, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88-CE-33-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Herman C. Belderok, Project Support Section Foreign Aircraft, Central Region, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88–CE–33–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The manufacturer has become aware that the Model Do–28 D–1 airplane C.G. Station Guide Line (SGL) located in the cabin and used for determining the loading station, does not correspond to the Airplane Flight Manual and the loading station referred to in the loading tables. In certain cases, using the values determined by the C.G. SGL may result in the airplane being loaded to exceed the forward or aft C.G. loading limits, thereby adversely affecting the airplane stability characteristics. To correct such a mislocated C.G. SGL, Dornier issued S/B No. 1121–1703, dated May 20, 1988, requiring an inspection of the C.G. SGL location and replacement if incorrectly installed. The Federal Republic of Germany Civil Aviation Authority, the Luftfarhrt Bundesamt (LBA) which has responsibility and authority to maintain the continued airworthiness of these airplanes in Germany, has classified these actions as mandatory. On airplanes operated under LBA registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of LBA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Dornier S/B No. 1121–1703, dated May 20, 1988, and the mandatory classification of this S/B by the LBA. Based on the foregoing, the FAA believes that the condition addressed by Dornier S/B No. 1121–1703, dated May 20, 1988, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require an inspection of the location of the C.G. SGL and replacement if the location guide is incorrectly installed.

The FAA has determined there are currently three airplanes affected by the proposed AD. The cost of the inspection specified by the proposed AD is estimated to be $20 per airplane. The total cost is estimated to be $60 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

PART 39—[AMENDED]

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

2. By adding the following new AD:

§ 39.13 [Amended]

Dornier: Applies to Model Do-28 D–1 airplanes (all serial numbers) certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude operation of the airplane beyond the approved forward or rear center of gravity limits, accomplish the following

(a) Inspect the installed Center of Gravity Station Guide Line in accordance with Dornier Service Bulletin No. 1121–1703, dated May 20, 1988, and determine its location. Prior to further flight, replace, and correctly locate the Guide Line if necessary.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; or Dornier GmbH, P.O. Box 2160, D–8000 Munchen 66, Federal Republic of Germany; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 25, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 88–25520 Filed 11–3–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88-ANE-39]

Airworthiness Directives; Facet Aerospace Products, Co.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) applicable to Facet Aerospace Products, Co. (hereinafter called "Facet") carburetor models MA-4-5, MA-5, and MA-6AA manufactured after April 1984. This proposed AD would require replacement of the air metering stop pin, P/N 62-226, within the next 200 hours time in service, or when the carburetor is removed from the engine, whichever occurs first, in accordance with Facet Service Bulletin (SB) A1-88, dated August 1988.

The proposal is prompted by two cases of the air metering stop pin coming loose, and in one case preventing the throttle from being advanced. A total of 189 available carburetors were inspected by Facet and twenty-three (23) units were found to be nonconforming, i.e., the retention fit of the pin to carburetor housing was below design requirements. This manufacturing deviation could be present in any of the subject model carburetors manufactured after April 1984, and these carburetors have been identified by specific serial numbers.

The proposed AD is needed to prevent a potential risk to the safety of flight, due to the possibility of the engine throttle becoming jammed inside the carburetor if the air metering stop pin becomes loose.

DATES: Comments must be received on or before December 5, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 88-ANE-39, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 88-ANE-39".

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable Facet SB A1-88, dated August 1988, may be obtained from Facet Aerospace Products, Co., 1048 Industrial Park Road, Bristol, Virginia 24201.

A copy of the SB is contained in Rules Docket No. 88-ANE-39, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Pat Perrotta, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. Facet estimates that it will require one manhour to perform the modification required by Facet SB A1-88. A modification kit including parts, tool and gage will be supplied at no charge by Facet.

All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 88-ANE-39". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that this condition of a loose air metering stop pin is likely to exist or develop on other Facet carburetors, Models MA-4-5, MA-5, and MA-6AA. Therefore, the proposed AD would require replacement of the pin, P/N 62-226, with another pin, P/N 62-F1, in accordance with Facet SB A1-88, within the next 200 hours time in service, or when the carburetor is removed from the engine, whichever occurs first.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this proposed regulation involves approximately 2,050 carburetors that must be modified at an approximate total cost of $400,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Facet Aerospace Products, Co. (Marvel Schebler): Applies to Facet Models MA-4-5, MA-5, and MA-6AA carburetors manufactured after April 1984, having Part Numbers (P/N) and Serial Numbers (S/N) as listed herein:

Carburetors	Serial No.
Model: MA-4-5:	
P/N 10-3878.....	G-54-11129 thru G-54-11136 G-55-11500 thru G-55-12064
P/N 10-4164-1.	K-49-9001 thru K-49-9023
P/N 10-4404.....	R-48-11501 thru R-48-11721
P/N 10-4404-1.	R-45-11005 and R-45-11007 AO-45-11000 thru AO-45-11101
P/N 10-5054.....	BZ-16-3000 thru BZ-22-3110
P/N 10-5193.....	CP-5-3500 thru CP-5-3967
P/N 10-4893.....	BD-5-1000
P/N 10-4893-1.	CL-4-3700 thru CL-7-3776
P/N 10-5284.....	DV-0-500 thru DV-0-505 DV-1-1000 thru DV-1-1392
Model: MA-5:	
P/N 10-4865.....	BC-33-5001 thru BC-33-5005
Model: MA-6AA:	
P/N 10-4218-1.	AK-37-3002
P/N 10-4401-1.	AC-38-3278 thru AC-38-3298 AC-40-4001 thru AC-40-4021
P/N 10-4438-1.	AH-29-6000 thru AH-29-6009

The carburetors listed above are used on, but not limited to:

Textron Lycoming Models O-360, O-540, VO-540, and TVO-435 series engines.

Teledyne Continental Model O-470 series engines.

Pezetel (Frankling) Model 6A-350 series engines.

Compliance is required within the next 200 hours time in service, or when the carburetor is removed from the engine, whichever occurs first, unless already accomplished.

To prevent possible jamming of the carburetor throttle, accomplish the following:

(a) Check all Facet (Marvel Schebler) Model MA-4-5, MA-5, and MA-6AA carburetors manufactured after April 1984 to determine the carburetor part number and serial number. These numbers can be found on the carburetor nameplate which is located on the throttle body.

Note: When checking the carburetor serial number for comparison to the above listing, disregard the center number, as this is used for Facet internal blueprint control only. Example: Carburetor P/N 10-3878 would have a serial number like this:

G- 54 (Disregard digits in this area) -11129 .

Use first letter(s) and number following second dash, only.

(b) If the part number and serial number is one of those listed above, prior to further flight, remove the carburetor, disassemble it, and replace the air metering stop pin, P/N 62-226, with the air metering stop pin, P/N 62-F1, in accordance with the instructions given in Facet Service Bulletin A1-88, dated August 1988.

(c) Stamp or etch a "P" on the lower portion of the carburetor nameplate and make an engine logbook entry to indicate compliance. NOTE: If the serial number is not one of those listed above, corrective action is not required.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, New York Aircraft Certification Office, ANE-170, may adjust the compliance time specified in this AD.

The FAA will request the approval of the **Federal Register** to incorporate by reference the manufacturer's service bulletin identified and described in this document.

Issued in Burlington, Massachusetts, on October 24, 1988.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88-25514 Filed 11-3-88; 8:45 am]

BILLING CODE 4910-13-17

14 CFR Part 71

[Airspace Docket No. 87-AWA-53]

Proposed Alteration of the Portland International Airport, OR, Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to alter the Portland International Airport, OR, Airport Radar Service Area (ARSA). This proposal would adjust the lateral limits of the ARSA core to exclude airspace in an area which does not receive adequate radar and/or communications coverage commensurate with the ARSA program and associated services.

DATE: Comments must be recieved on or before January 3, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-53, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-53." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Portland International Airport ARSA to eliminate the area in the inner core, west of the east bank of the Willamette River up to 2,300 feet MSL. This airspace is predominantly utilized by helicopters and seaplanes following the river at low altitudes. The altitudes are too low for radar and communications coverage in this sector of the ARSA where the terrain prevents an acceptable degree of coverage. Consequently, aircraft seldom are capable of complying with the ARSA requirement for communicating with air traffic control (ATC) prior to encroachment upon this boundary of the airspace. This forces the pilot either to climb to contact ATC or circumnavigate over densely populated downtown Portland. The elimination of ARSA airspace in the above instance is directly attributable to reduced ATC service capability at altitudes affected by terrain features. Coverage by radar and/or communication equipment is limited to line of sight.

Temporary loss of radio or radar coverage is not an uncommon situation when operating at certain altitudes where the ATC facility is located in close proximity to higher terrain. Normally this is not considered an adverse factor in ATC's ability to provide services, as instrument flight rules (IFR) operations are conducted at altitudes which ensure adequate coverage, and visual flight rules (VFR) operations are advisory in nature with voluntary pilot participation. To the maximum extent practicable, FAA, in the development of regulatory airspace, ensures adequate coverage is provided.

The FAA has determined that this proposed regulation is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, for the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposal is not a "major rule" under Executive Order 12291.

Regulatory Evaluation

The proposed modification to the Portland International Airport ARSA is intended to improve the utility of the affected airspace. The proposal to eliminate a small amount of airspace from the ARSA is not expected to result in any costs associated with a reduction in the controlled airspace. The affected airspace currently is not within sufficient radar and/or communications coverage necessary to provide ARSA services because of terrain features. Adjusting the ARSA boundary will not alter this situation. Reconfiguring the ARSA to more accurately reflect the terrain characteristics will improve the efficiency of its operations, and various users, especially the users of the Willamette River and downtown heliports, will benefit from the restoration of this airspace.

The FAA has determined that the economic impact of this proposal is so minimal as not to require further regulatory evaluation. A copy of the regulatory evaluation for the original Portland International ARSA is available for review in FAA Airspace Docket No. 85–AWA–2.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at one location within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

Throughout the ARSA program the FAA has attempted to eliminate potentially adverse impacts on satellite airports within five-nautical miles of ARSA centers and the small businesses based at these airports, as well as flight training, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations, or in some cases, by providing airspace exclusions. This modification of the Portland International Airport ARSA will reduce the size of the ARSA and exclude an area in the vicinity of the Willamette River which will ease local operations.

For these reasons, the FAA certifies that the proposed amendment, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

Federalism Implications

The regulation proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed under "Regulatory Evaluation Summary," the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Portland International Airport, OR, [Amended]

By removing the words "north shore of the Columbia River to the 5-mile arc from Portland International;" and by substituting the words "north shore of the Columbia River to the 5-mile arc from Portland International; and excluding that airspace west of the east bank of the Willamette River;"

Issued in Washington, DC, on October 25, 1988.

Shelomo Wugalter,

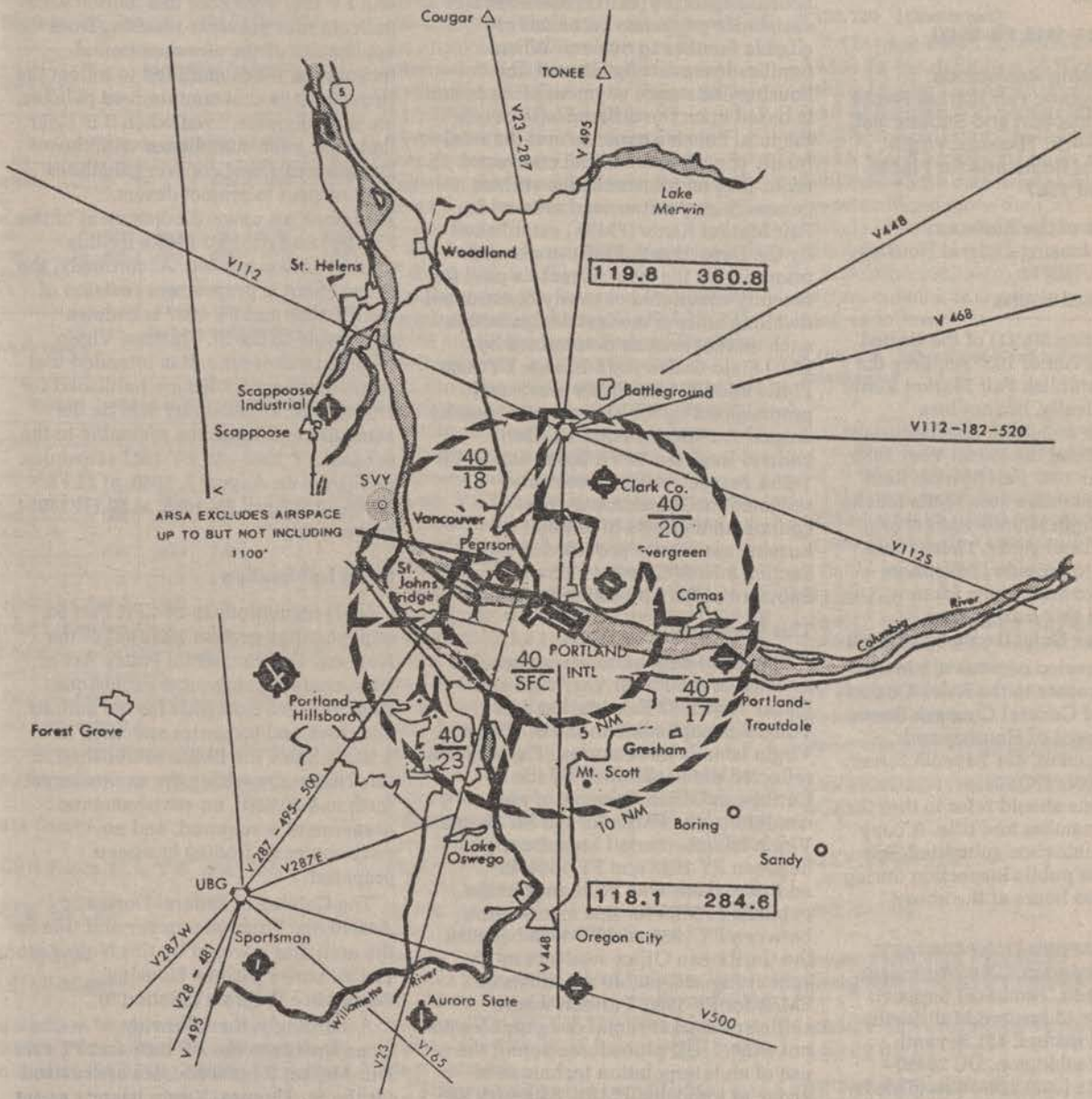
Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

PORTLAND, OREGON
PORTLAND INTERNATIONAL AIRPORT
FIELD ELEV. 26' MSL



LEGEND

VFR CHECKPOINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

[FR Doc. 88-25519 Filed 11-3-88; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-88-1845; FR-2543]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—St. Thomas, Virgin Islands; Special Revisions for Fiscal Years 1986 and 1987

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document proposes to amend the Fiscal Year 1986 and Fiscal Year 1987 Fair Market Rent Schedules to establish new FMRs for the St. Thomas, Virgin Islands market area for those two fiscal years. These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

Comment Due Date: December 5, 1988.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 143f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these progams, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. For the FY 1986 FMRs and FY 1987 FMRs previously promulgated by the Department (see the August 7, 1986 and April 26, 1988 **Federal Register**, 51 FR 28486 and 53 FR 14954, respectively), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document announces a special revision to the Fiscal Year 1986 and Fiscal Year 1987 Fair Market rent schedules applicable to the St. Thomas, Virgin Islands market area. These FMRs reflected data submitted by the Caribbean Office. Because of market conditions, the FMRs for the St. Thomas, Virgin Islands market area dropped between FY 1983 and FY 1984. In addition, these was no change in the published FMRs for this market area between FY 1985 and FY 1986 because the Caribbean Office was late in submitting acceptable schedules of FMRs for FY 1986. Further, where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacany rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The Caribbean Office requested that the Department established new rents for the St. Thomas, Virgin Islands market area. Careful analysis of this request and reanalysis of the FY 1986 and FY 1987 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear there has been compliance with the Department's cost contain guidelines with respect to project design. Therefore, an upward adjustment of the FY 1986 and FY 1987 FMRs for this market area is needed. Accordingly, the Department is proposing a revision of the FY 1986 and FY 1987 schedules applicable to the St. Thomas, Virgin Islands market area. It is intended that when these schedules are published for effect, their applicability will be the same as set forth in the preamble to the original FY 1986 and FY 1987 schedules, published on August 7, 1986, at 51 FR 28486, and April 26, 1988, at 53 FR 14954, respectively.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(l), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Accordingly, the following amendments to the FY 1986 and FY 1987 Fair Market Rent schedules are revised for the St. Thomas, Virgin Islands as set forth below:

PART 888—[AMENDED]

1. The authority citation for 24 CFR Part 888 continues to read as follows:

Authority: Section 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

[Including housing finance and development agencies' programs]

Region 2—New York Regional Office
Market: St. Thomas, Virgin Islands

Structure type	Number of Bedrooms				
	-0-	-1-	-2-	-3-	-4+
Special Revision of FY 1986 FMRs					
Detached			899	981	1107
Semi-Detached/Row	605	668	770	886	1006
Walkup	485	565	695	775	869
Elevator 2-4 STY	510	590	720		

Structure type	Number of Bedrooms				
	-0-	-1-	-2-	-3-	-4+
Special Revision of FY 1987 FMRs					
Detached			926	1010	1140
Semi-Detached/Row	623	688	793	913	1036
Walkup	500	582	716	798	895
Elevator 2-4 STY	525	608	742		

Dated: October 27, 1988.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-25511 Filed 11-3-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151, 155, and 158

46 CFR Part 25

[CGD 88-002]

RIN 2115-AC89

Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78; Correction

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Coast Guard is correcting errors in the preamble and proposed rules which appeared in the Federal Register on October 27, 1988 (53 FR 43622).

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Joel R. Whitehead, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-3), (202) 267-0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published proposed rules on October 27, 1988 (53 FR 43622) which would implement the Act to Prevent Pollution from Ships (33 U.S.C. 1901-1911), as amended by Title II of Pub. L. 100-220, (101 Stat. 1458) and Annex V of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution by Ships, 1973 (MARPOL 73/78). Due to an administrative error in transferring change documents to the **Federal Register**, that proposed rule contained several errors which are corrected by this notice.

The following corrections are made in CGD 88-002, the Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78 published in the **Federal Register** on October 27, 1988 (53 FR 43622).

1. On page 43626, second column, line 46, change the word "third" to "fourth."

2. On page 43627, second column, line 43, the sentence which reads "The proposed rules would require that Annex V COAs be issued to ports and terminals which receive oceangoing ships subject to Annex I or II of MARPOL 73/78 and to those which receive more than 25 port arrivals annually by ships whose last port of call was outside the continental United States or Canada" is correctly revised to read as follows: "The proposed rules would require that Annex V COAs be issued to ports and terminals which receive oceangoing ships subject to Annex I or II of MARPOL 73/78 and to those ports and terminals in which commercial fishing vessels offload more than 500,000 pounds of fish or shellfish products annually."

3. On page 43627, third column, line 6, delete the paragraph beginning with the word "However" and ending with the words "net fragments."

4. On page 43630, third column, line 28, delete the entire paragraph under the heading "33 CFR 158.135 Who Must Have a Certificate of Adequacy?" and in its place add:

"This section would be added to clarify who must have a COA. Adding this section is necessary since all Annex I and II ports and terminals are required to be issued COAs and it is proposed that only a small portion of Annex V ports and terminals would be required to have COAs. Ports and terminals subject to Annex V of MARPOL 73/78 would have to hold COAs if they receive ships subject to Annex I or II of MARPOL 73/78. In addition, commercial fishing facilities where fishing vessels offload more than 500,000 pounds of fish or shellfish products annually would need a COA."

5. On page 43631, second column, add the major heading "VI. Regulatory Evaluation and Environmental Impact" before the subheading "Regulatory Evaluation."

6. On page 43633, third column, line 17, change "fifth" to "sixth."

§ 158.120 [Corrected]

7. On page 43645, first column, in § 158.120, the definition of "Commercial fishing facility" is correctly revised to read as follows: " 'Commercial fishing facility' means a port that includes docks, piers, processing houses or other facilities where commercial fishing vessels offload more than 500,000 pounds of fish or shellfish products annually."

8. Section 158.135(c) on page 43645, second column, is correctly revised to read as follows:

§ 158.135 Who Must Have a Certificate of Adequacy?

* * * * *

(c) A COA for garbage if it receives—

(1) The ships under paragraph (a) or (b) of this section; or

(2) Commercial fishing vessels that offload more than 500,000 pounds of fish or shellfish products annually.

Dated: November 1, 1988.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-25596 Filed 11-3-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3471-8]

Ocean Dumping; Proposed Designation of Site; Port Aransas, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located in the Gulf of Mexico offshore of Port Aransas, Texas for the continued disposal of material dredged from the Corpus Christi Ship Channel. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time.

DATE: Comments must be received on or before December 19, 1988.

ADDRESSES: Send comments to:

Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. E.P.A., 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region VI (E–FF), 1445 Ross Avenue, 10th Floor, Dallas, Texas 75202–2733

Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Corpus Christi Ship Channel site as an interim site for the disposal of material dredged from the entrance channel. In January 1980, the interim status of the site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region VI address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with its ocean dumping site designations (30 FR 16186, May 7, 1974).

EPA has prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Corpus Christi Ship Channel Ocean Dredged Material Disposal Site Designation." On September 30, 1988, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register.** The public comment period on this Draft EIS closes on November 14, 1988. Limited copies of the Draft EIS are available from the EPA address given above.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers and the analysis was updated in this Draft EIS. The nearest available land disposal area is 48 acres in size and is located 4 miles away from the seaward end of the project. Because of the high costs of transport as well as the limited capacity of the area, this alternative is not feasible. Also since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would result in a significant loss of quality wetlands or bay bottoms.

Four ocean disposal alternatives—two nearshore sites (including the proposed site), a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites involved limited feasibility for monitoring, increased transportation costs and increased safety risks. Because of safety and economic disadvantages, monitoring limits and the lack of environmental benefit, the mid-shelf site and the deepwater site were eliminated from further consideration.

Portions of the interim-designated site are within the navigational buffer zone, the jetty buffer zone and the beach buffer zone. Therefore, the interim-designated site is not being proposed for designation in its entirety. The proposal disposal site includes much of the area of historical impact of the interim site but excludes the three buffer zones referenced above.

EPA is coordinating with the National Marine Fisheries Service in accordance with the requirements of section 7 of the Endangered Species Act. EPA is also coordinating, as a part of the NEPA/EIS process, with the State of Texas regarding any requirements under the Coastal Zone Management Act.

C. Proposed Site Designation

The proposed site is located approximately 1.5 miles from the coast at its closest point. The water depth at the proposed site ranges from 35 to 50 feet. The coordinates of the site are as follows: 27°49'10" N, 97°01'09" W; 27°48'42" N, 97°00'21" W; 27°48'06" N, 97°00'48" W; 27°48'33" N, 97°01'36" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; Section 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met. The characteristics of the proposed site are reviewed below in the terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).) Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is flat with no unique features or relief.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).) Living resources' breeding, spawning, nursery and passage areas in the project area were identified as excluded areas during the siting feasibility process and eliminated from consideration. Approximately 3.5 miles to the southeast and 8 miles to the east southeast of the preferred site, there are fish havens which are excluded, including one mile buffer zones. The pass between the jetties serves as a migratory route for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. This area, including a one-mile buffer zone, is excluded as a migratory passage. Also excluded are lighted platforms and non-submerged shipwrecks which improve fishing.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).) The proposed site is approximately 1.5 miles from Mustang Island and San Jose Island beaches or other amenity areas; e.g., Mustang Island State Park and Caldwell Pier.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).) Only maintenance material from the Corpus Christi Ship Channel will be disposed. Historically, an average of 955,000 cy/yr has been dredged from the channel at roughly 18-month intervals. This material has historically been transported by hopper dredged but could be transported by pipeline. Based on chemical analyses and biological toxicity studies of past maintenance material, it was concluded that no special location or precautions would be necessary for the disposal of the dredged materials.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5).) The proposed site is amenable to surveillance and monitoring. A monioring program, consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses, is proposed for the Corpus Christi Channel site.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).) Physical oceanographic parameters including disersal, horizontal transport and vertical mixing characteristics were used: (1) to develop the necessary buffer zones for the siting feasibility analysis; and (2) to determine the minimum size of the proposed site. Predominant longshore currents, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site.

7. *Existense and effects of current and previous discharges and dumping in the area (including cumulatie effects).* (40 CFR 228.6(a)(7).) Based on the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area, there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean dispoal under 40 CFR Part 227. Studies of the benthos at the interim-designated site and nearby areas have indicated that the composition of the benthos is different from that in nearby "natural bottom" areas. This difference in benthos composition is due primarily to the fact that the substrate at the interim-designated site is almost pure sand versus the mixed grain size of the "natural bottom". Therefore, the proposed disposal site, which emcompasses much of the interim-designated site, was placed as near shore as possible to take advantage of the fact that the nearshore substrate is sandier than that further offshore.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).) Impacts to shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites have been evaluated for the Corpus Christi Ship Channel site designation. The proposed site will not interfere with other legitimate uses of ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Disposal operations in the past have not interfered with other uses.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).) Monitoring studies have shown only short-term water-column pertubations of turbidity, and perhaps increased chemical oxygen demand (COD), which resulted from disposal operations. No short-term sediment quality perturbation, except grain size, have been directly related to disposal operations. In general, the water and sediment quality is good thoughout the disposal area and there have been no long-term adverse impacts on water and sediment quality from disposal operations. However, there has been a long-term impact on the grain size, and thus, on the benthos at the interim-designated site.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).) With a disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. Continued disposal of maintenance material at the proposed site should not attract nor promote the development or recruitment of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11).) Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located near the jetties and is well within the buffer zone surrounding the jetties. Use of the proposed site would not impact any known historical or cultural sites. This determination is being coordinated with the Texas Historical Commission.

E. Proposed Action

Based on the Draft EIS, EPA proposes to designate the Corpus Christi Ship Channel site for continued use for the ocean diposal of dredged material. The site is compatible with the five general criteria and eleven specific factors used for site evaluation.

Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Date: October 21, 1988.

Robert E. Layton, Jr.,

Regional Administrator of Region VI.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Corpus Christi Ship Channel and adding paragraph b (39) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(39) Corpus Christi Ship Channel, Texas—Region VI.

Location: 27° 49′ 10″ N, 97° 01′ 09″W; 27° 48′ 42″ N, 97° 00′ 21″ W; 27° 48′ 06″N, 97° 00′ 48″W; 27° 48′ 33″N, 97° 01′ 36″W.

Size: 0.63 square nautical miles.

Depth: Ranges from 35–50 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Corpus Christi Ship Channel, Texas.

[FR Doc. 88-25578 Filed 11-3-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 228

[FRL-3471-7]

Ocean Dumping; Proposed Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate an existing dredged material disposal site located in the Gulf of Mexico near the Houma Navigation Canal (HNC) for the continued disposal of dredged material removed from the Cat Island Pass section of the HNC. This proposed site designation is for an indefinite period of time. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material.

DATE: Comments must be received on or before December 19, 1988.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region VI (E–FF), 1445 Ross Avenue, 10th Floor, Dallas, Texas 75202, and

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the HNC site for the disposal of material dredged from the Cat Island Pass section of the HNC. In January 1980, the interim status of the HNC site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region VI address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) have jointly prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Houma Navigation Canal Ocean Dredged Material Disposal Site Designation, Terrebonne Parish, Louisiana." On September 16, 1988, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register.** The public comment period on this Draft EIS closes on October 31, 1988. Limited copies of the Draft EIS are available from the EPA address given above.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Draft EIS baed on information from the COE. Inland disposal sites are currently used for the inland reaches of the Houma Navigation Canal. These inland sites, however, cannot accommodate the dredged material from Cat Island Pass. Use of these upland sites for material which has traditionally been dumped at sea would quickly decrease the lifetime of the sites. Additionally, the nearest land-based sites are about 30 miles away and their use would involve barging material, which is economically impractical.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located west of the existing site was also evaluated. However, no environmental benefits would be gained by its selection. Rather, the potential exists for greater impact to

Isle Dernieres from the turbidity plume at this site.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE is currently coordinating a no adverse effect determination with the National Marine Fisheries Service. EPA is also coordinating with the State of Louisiana under requirements of the Coastal Zone Management Act.

C. Proposed Site Designation

The existing site is located about eight miles south of the Terrebonne Parish mainland and about three miles from Timbailer Island to the east and Isles Dernieres to the west. The site extends approximately four miles offshore. Water depths at the site range from 6 to 30 feet. The coordinates of the site are as follows: 29°05'22.3" N, 90°34'43" W; thence following a line 1000 feet west of the channel centerline to 29°02'17.8" N, 90°34'28.4" W; thence to 29°02'12.6" N, 90°35'27.8" W; thence to 29°05'30.8" N, 90°35'27.8" W; thence to the point of beginning.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Site are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft EIS, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the proposed site are reviewed below in terms of the eleven specific factors.

1. Geographical position, depth of water, bottom topography and distance from coast. [40 CFR 228.6(a)(1).]

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is relatively flat and slopes to the south (3.8 feet per mile).

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. [40 CFR 228.6(a)(2).]

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The HNC ocean disposal site represents a small area of the total range of the fisheries resource.

3. Location in relation to beaches and other amenity areas. [40 CFR 228.6(a)(3).]

The HNC ocean disposal site is about three miles from the nearest beaches on the barrier islands. These beaches are sparsely used because they are accessible only by boat. The turbidity plume would be diluted to ambient levels well before reaching these beaches.

4. Types and quantitites of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any. [40 CFR 228.6(a)(4).]

The dredged material to be disposed is from the adjacent area of the HNC and consists of varying amounts of sand, silt and clay. Sediments generally decrease in grain size in the offshore direction, with sands being predominant in the northern portion of the disposal site and 80 to 97 per cent silts existing generally in the southern area. Approximately 400,000 cubic yards of material are disposed in the site annually. About 90 percent of the material is removed with a hydraulic pipeline dredge. The material is released as an uncohesive slurry directly into the water overlying the site. The remaining 10 per cent of the material is removed by hopper dredge and released as a slurry form the hopper. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. Feasibility of surveillance and moinitoring. [40 CFR 228.6(a)(5).]

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is nearshore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any. [40 CFR 228.6(a)(6).]

Mixing processes, current characteriscits, and sediment transport in the nearshore region off Cat Island Pass are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a vertically homogenous water column in the area. Density stratification can occur seasonally. In the summer, bottom waters on the Louisiana shelf are occasionaly oxygen depleted, which causes mass mortalities of benthic organisms. During a site study in December 1980 and June 1981, waters were supersaturated with oxygen at all depths. A westerly surface flow of 0.8 knots predominates during winter and spring. Velocities of 3 to 4 knots may occur during storm events. In non-storm conditions, predominant sediment transport along the barrier islands fronting Terrebonne Bay is toward the west. Suspended sediments associated with tidal discharge or dredged material disposal, may be rafted along with the tidal plumes and eventually influenced by wind-driven, longshore currents.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects). [40 CFR 228.6(a)(7).]

Dredged materials from maintenance of the HNC have been disposed at the site since 1964, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor releases of trace metals, and temporary change in sediment grain size.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean. [40 CFR 228.6(a)(8).]

In the vicinity of the disposal site the majority of shipping traffic is confined to the HNC. Dredging facilitates shipping; periodic use of the disposal site has some potential for interfering with ship movement in the HNC during dredging and disposal operations. Shoaling immediately after dredging stopped resulted in the grounding of one ship in the disposal site.

Nearshore areas contain a productive "high-use" fishing ground for a numbr of commercial and recreational species. The Houma site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries.

The nearest shellfish culture is the Terrebonne Bay estuarine area; disposal operations at the site would not affect this activity. There are oyster leases in remnant bayous on the north side of Isles Dernieres and the Timbalier Islands. Designation of the disposal site would not impact these lease areas. Desalination and areas of special scientific importance do not occur in the vicinity of the disposal site.

Petroleum and mineral-extracting activities occur offshore within 3.5 miles of the site and are not impacted by use of the site. Intermittent dumping does not interfere with the exploration or production phases of resource development, or with other legitimate uses of the ocean.

9. The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys. [40 CFR 228.6(a)(9).]

Water column concentrations of trace metals and chlorinated hydrocarbons (CHC) were below EPA's water quality criteria during the 1980–1981 study. Concentrations in sediment were strongly related to grain size, with highest levels in silts and clays offshore. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types.

Nutrient concentrations, turbidity, and suspended solids, are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

The benthos at the site is dominated by polychaete worms, ribbon worms, and the little surf clam. Population densities were highest in the late spring. Several of the dominant organisms, inside and outside the site, were small bodied opportunistic species capable of rapid recolonization of disturbed sediments. There was little difference in density or diversity of benthic organisms inside and outside the site. During disposal, however, species density and diversity would decline. Recolonization would start at the cessation of dumping and be essentially complete within two to six months.

10. Potentiality for the development or recruitment of nuisance species in the disposal site. [40 CFR 228.6(a)(10).]

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance. [40 CFR 228.6(a)(11).]

There are no known features of historical or cultural significance on the barrier islands to either side of the site. No known shipwrecks are located within site boundaries.

E. Proposed Action

Based on the Draft EIS, EPA proposes to designate the Houma Navigation Canal ocean dredged material disposal site. The existing site is compatible with the general criteria and specific factors used for site evaluation. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: October 4, 1988.

Robert E. Layton, Jr.,

Regional Administrator of Region VI.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Houma Navigation Canal, Louisiana-Cat Island Pass and adding paragraph (b)(38) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(38) *Houma Navigation Canal, Louisiana—Region VI.*

Location: 29° 05′ 22.3″ N, 90° 34′ 43″ W; thence following a line 1000 feet west of the channel centerline to 29° 02′ 17.8″ N, 90° 34′ 28.4″ W; thence to 29° 02′ 12.6″ N, 90° 35′ 27.8″ W; thence to 29° 05′ 30.8″ N, 90° 35′ 27.8″ W; thence to the point of beginning.

Size: 2.08 square nautical miles.

Depth: Ranges from 6–30 feet.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of Cat Island Pass.

[FR Doc. 88–25577 Filed 11–3–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-21: Notice No. 1]

Bus Window Retention and Release; Advance Notice of Proposed Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice announces that NHTSA is considering the issuance of a proposal to amend Federal Motor Vehicle Safety Standard No. 217, *Bus Window Retention and Release,* by increasing the minimum number of emergency exits on school buses. The agency seeks comments on the extent to which such an amendment would help to speed the evacuation of a bus following a crash, as well as on the costs and operational aspects of additional exits, and on any negative effects (such as reductions in structural integrity or seating capacity).

This notice comprises one part of NHTSA's comprehensive effort to assess the safety need to amend several of the motor vehicle safety standards relating to the crashworthiness and post-crash performance of buses in general and school buses in particular. These issues have received substantial public attention in recent months, following the tragic crash earlier this year of a compact pickup truck driven by a drunken motorist into a crowded church bus. Twenty-seven of the 67 occupants of the bus died, apparently as a result of smoke inhalation, and not from impact trauma resulting from the collision. Even though the Kentucky crash was a unique catastrophe, and the safety record of school buses is extremely positive overall, the agency believes that it should consider whether there are improvements it could propose in its safety standards that might provide a higher level of safety than currently exists.

DATES: Comment closing date is January 3, 1989.

ADDRESSES: Comments should refer to the docket and notice numbers of this proposal, and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590.

Docket Room hours are 8 a.m. to 4 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William Brubaker, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4919.

SUPPLEMENTARY INFORMATION: On May 14 of this year, 27 persons died, apparently of smoke inhalation in a Carrollton, Kentucky crash involving a church bus and a compact pickup truck. This catastrophe was unique in that there had been no fire-related fatalities in school bus crashes prior to the Carrollton crash. A number of unusual factors combined to make this crash and its consequences catastrophic. For example, the crash was extremely severe. The two vehicles involved had a closing velocity in excess of 100 mph. During or shortly after the crash, a fire apparently started near or at the front bus entrance and was sustained by fuel from the wreckage. Twenty-seven occupants of the bus died, apparently as a result of smoke inhalation, and not from bodily injuries resulting from the collision. The church bus, a used school bus designed to carry 66 young children, was filled to capacity with children, teenagers, and adults. There was reportedly at least one passenger sleeping on the bus floor and at least one picnic cooler in the aisle.

The bus was manufactured in 1977 shortly before the April 1, 1977 effective date of the school bus safety standards NHTSA issued pursuant to the School-bus and Motor Vehicle Safety Amendments of 1974. The bus was used first as a school bus, and later sold to a church. Thus, the bus was typical of the pre-1977 school bus body type which had been in use for many years, and presumably met Federal Motor Vehicle Safety Standard No. 302 for the flammability of interior materials (which became effective September 1, 1972). The bus was not required to comply with the comprehensive school bus emergency exit requirements of Standard No. 217 (which took effect on April 1, 1977), and apparently did not fully meet all aspects of that Standard.

In the aftermath of the Kentucky crash, NHTSA has initiated a series of efforts to assess the safety need to amend several of the motor vehicle safety standards relating to the crashworthiness of buses in general and that of school buses in particular. (Under NHTSA's regulations, a "bus" is a motor vehicle designed for carrying 11 or more persons (driver included). A "school bus" is a "bus" that is sold for purposes that include carrying students to and from school or related events (common carriers in urban transportation excluded). 49 CFR Section 571.3(b).)

In taking these steps, NHTSA wishes to emphasize that the safety record of these vehicles has been remarkably good. The fatalities in the Kentucky tragedy were the first fire-related fatalities in a school bus on the agency's record since the agency began careful tracking of all traffic fatalities in 1975. Further, over the past 10 years, school bus occupants have sustained an average of 15 fatal injuries each year. While each of those fatalities is tragic, the number of school bus occupant fatalities is small compared to occupant fatalities in all other types of motor vehicles. For example, in 1987, there were 38,544 occupant fatalities in motor vehicles other than school buses, which includes 5,663 deaths among children aged five to 18. (The 1987 fatality statistics are representative of fatality data in recent years.)

In view of the 3.3 billion miles travelled by school buses each year, the school bus is one of the safest means of travel. On a vehicle mile basis, there are 0.5 school bus fatalities per hundred million vehicle miles travelled, compared to 1.9 occupant fatalities per hundred million vehicle miles in passenger cars. On a per-vehicle-mile basis, school buses are about four times safer than passenger cars. And since a school bus carries more occupants than a passenger car, the comparison on a per-passenger-mile basis would be even more favorable for school buses.

The safety record for other types of buses is also extremely good. Between 1977 and 1987, an average of 18 occupant fatalities occurred annually in transit and inter-city buses. In this same period, there was one fire-related occupant fatality in a bus other than a school bus.

As safe as today's buses are, it is incumbent upon NHTSA to inquire whether the bus fleet might be made safer still. NHTSA is issuing this notice to obtain factual information on available technologies, real-world operational and environmental conditions, and other factors that might help the agency decide what further steps should be taken to improve bus safety and what steps could be reasonably taken to reduce the risk of another bus tragedy similar to the Kentucky crash. The agency believes it is important to find out more about the *potential* for fire-related injury and death on buses and school buses, and whether reasonable measures can be taken to reduce that potential.

While NHTSA's review generally encompasses all buses, for Standard

217, which, among other things, sets out requirements for the number and type of emergency exits in buses, the agency is interested specifically in information that applies to school buses. Under Standard 217, large and small buses other than school buses already must have multiple emergency exits on either side of the vehicle. Given these requirements, NHTSA believes that further inquiry into additional exits for non-school buses is unnecessary at this time.

Standard No. 217: Bus Window Retention and Release. An important factor in minimizing fire-related injury and death on buses is the speed and ease with which occupants can evacuate the vehicle in an emergency. As part of its effort to assess whether there is a need to amend Federal requirements for buses, NHTSA is reviewing Standard No. 217, *Bus Window Retention and Release.* When Standard No. 217 originally became effective on September 1, 1973, it required that buses other than school buses have exits whose square area equaled or exceeded a number which was the function of the number of seating positions. The type of exit used to comply with this requirement was left to the choice of the manufacturer. School buses were excluded from this requirement for the reasons explained in the notice of proposed rulemaking:

> In view of discipline problems associated with mandatory quick-release and exit devices throughout a school bus which may interfere with the school bus driver's task, and the added risk of children falling from moving school buses, push-out windows for school buses would remain optional. 35 FR 13025; August 15, 1970.

The Standard did require that when a school bus was voluntarily equipped with push-out windows or with other emergency exits, those exits must conform to the same requirements specified in the Standard for exits in buses other than school buses.

In response to the School Bus Amendments of 1974, the Standard was amended to include emergency exit requirements for school buses. Instead of simply specifying the total area of all the exits combined, leaving the choice of exit type to the manufacturer, the standard requires that all new school buses have either (1) one rear emergency door, or (2) "one emergency door on the vehicle's left side that is in the rear half of the bus passenger compartment and is hinged on its forward side, and one push-out rear window." Like all of the agency's safety standards for motor vehicles, Standard No. 217 is a minimum safety standard. In this instance setting out the lowest permissible number of emergency exits for a school bus.

In this notice, the agency is exploring the question of whether additional emergency exits may so facilitate exiting a school bus following a crash that a rulemaking is warranted to require additional emergency exits on all new school buses. (In a separate document in this issue of the **Federal Register**, NHTSA is seeking comment on the related issue of the flammability resistance of materials used in bus interiors to help the agency determine whether rulemaking action is warranted, and if so, what regulatory approaches may be viable. In addition, an ANPRM on the Federal Standard for fuel system integrity [FMVSS No. 301] is expected to be issued shortly.)

Any purchaser of a school bus (State, school district, or private school) may use procurement specifications to require that vehicle to meet a higher standard than the Federal standard. (Under Federal law, any State law that requires school buses in the state to meet a higher performance standard can apply only to buses purchased for the State's own use, which NHTSA has interpreted to mean any public school system in that State.) The agency is aware of six states that already require more emergency exits for school buses procured for use by them and their subdivisions than is required under Standard No. 217. They are California, Indiana, New York, Oregon, Washington, and West Virginia. In addition, individual school districts or private schools may be purchasing buses with more exits than the minimum required under Standard 217.

Issues

This notice discusses a range of issues that NHTSA is considering in deciding whether to develop and issue a proposal relating to the emergency exits in school buses, and makes a number of requests for opinions and data. Since this is an advance notice of proposed rulemaking, no rule will be issued on this subject without a notice of proposed rulemaking and further opportunity to comment.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including, but not limited to, statistical and cost data and the source of such information. NHTSA would like commenters to respond to questions concerning the following issues regarding additional emergency exits: (a) the safety need for increasing the number of emergency exits on school buses; (b) requirements concerning additional exits; (c) effects of additional exits on other aspects of safety; (d) costs of additional exits; (e) methods for encouraging correct use of any such exits; and (f) incidental matters that may arise as a consequence of increasing the number of required exits. For easy reference in drafting comments, the requests are numbered consecutively.

Safety Need. The central issue in considering whether to make any safety standard more stringent concerns safety need. State and local school systems and private services that transport students to and from school and school-related activities are uniquely qualified to supply NHTSA with illuminating information on in-service experiences with school bus emergency exits. Therefore, the agency is seeking comment from school boards, counties, States, pupil transportation services, and others on their experiences with use of emergency exits in emergencies. While we encourage commenters to respond with their experiences in any crash mode, the agency is particularly interested in experiences with emergencies involving bus fires.

1. Is it significantly easier and faster to evacuate passengers from buses manufactured in accordance with Standard No. 217's comprehensive school bus emergency exit requirements (which became effective for school buses on April 1, 1977) than in pre-standard buses? What are the experiences of non-school bus operators (such as transit, intercity, charter, and private operators) with evacuating buses that were manufactured before Standard 217 as compared with evacuating those buses manufactured after the Standard became effective (September 1, 1973 for buses other than school buses)?

2. What injury and non-injury data exist regarding real-world experiences with emergency exits on buses? Based on those data or other information, would increasing the number of emergency exits beyond the number currently required by Standard 217 facilitate egress in an emergency? To what extent?

3. What experience or information led to the decisions of various States or local jurisdictions or private operators to order school buses with additional emergency exits beyond the minimum specified by Standard 217?

What has been the effect of that decision on bus occupant safety? What is the experience of companies and school districts that order school buses with additional safety exits? Are these additional exits actually used in

accidents? Are they used correctly? Have problems with vehicle maintenance, occupant tampering, or misuse changed as a consequence of having these additional exits? How?

4. Standard No. 217 represents one end of the spectrum in the number of emergency exits required in a school bus (one or two depending depending upon the option selected by the manufacturer), and the State of New York the other (a total of 10 required exits). If NHTSA were to increase the minimum number of required school bus emergency exits, how should the agency determine what number appropriately meets the need for safety? Should the number of exits be related to vehicle passenger capacity, to the time it takes to evacuate the vehicle, or to some other factor? Is there an accurate, objective method for testing evacuation time?

Requirements Concerning Additional Exits. If NHTSA were to propose an amendment to Standard No. 217 increasing the required minimum number of emergency exits, then the agency would have to determine appropriate, objective specifications for those exits. The usual design configurations for emergency exits are standard exit doors, roof hatches, and push-out windows. The agency is considering whether there are other types of exits that may be appropriate for school buses. For example, for larger school buses, the windshield retention system might be modified to make the windshield an avenue of escape in an emergency if it had a configuration similar to a push-out side window. NHTSA is seeking comment on a number of questions relative to the configuration of required exits, and to other specifications the agency might wish to consider if additional emergency exits are required.

5. What specific test procedures and performance requirements are appropriate for side door exits? For push-out window exits? For roof hatch exits?

6. What size should be prescribed for additional door, window, or roof exits?

7. Are the current requirements for emergency release location and operating force appropriate for push-out windows on school buses?

8. To what extent would wider aisles aid in reducing the time needed by occupants to reach emergency exits and leave the vehicle? Are aisle widths adequate to permit occupants to crawl toward an exit, if necessary?

9. Would adding more exits and widening vehicle aisles reduce vehicle passenger capacity? If yes, to what extent and at what cost? Also, if passenger capacity is reduced, would additional buses have to be placed in service adding an increased risk of accident?

Effects of Additional Exits on Other Aspects of Safety. Any proposal for manufacturers to install additional emergency exits should not compromise other aspects of school bus safety. A critical consideration in this review process is what effect requiring more emergency exits would have on the structural integrity and other aspects of the crashworthiness of school buses. Therefore, NHTSA seeks responses to the following questions.

10. What effect will additional cutouts in the main body structure have on the vehicle's capability to withstand crashes? What have the safety impacts been in states and localities that already require more emergency exits than the minimum number currently required under Standard 217?

11. Would additional exits have to be staggered (i.e., located so that side exits on opposite sides of a bus are not directly across from one another) to maintain overall vehicle structural integrity?

12. Would there be a limit on the number of exits that could be provided due to additional weight on wheel axles?

13. If there are additional push-out window exits, would more exits of that type increase the risk of ejection? Would the addition of other types of exits increase that risk? Would the risk of roll-over ejection be particularly increased?

14. Are current retention requirements in Standard 217 adequate to ensure that exits stay closed in a roll-over or other crash mode? If push-out windows frequently are opened and closed during evacuation drills, how would this specific activity affect the in-service life of these windows and their integrity in a roll-over?

15. What other potential adverse safety implications are there for various emergency exit configurations?

Costs Of Additional Exits. This spring, NHTSA obtained information on the cost of retrofitting school buses with push-out window or roof vent emergency exits. Projected costs for aftermarket installation of push-out windows were about $70.00 per window, and for roof hatch escapes about $300.00 per exit. The agency believes that the cost of adding more required emergency exits must be balanced against the possibility that those who purchase school buses and transport children in them might feel compelled to retain an older school bus instead of replacing it with a newer, more expensive one. If a requirement for additional emergency exits so increases the cost of a new school bus that purchasers would extend the in-service life of older vehicles, then school bus passengers may be at risk of riding for a longer time in vehicles that lack beneficial safety improvements. Therefore, the agency poses the following questions for comment.

16. What would be the likely cost to final purchasers per addition of an emergency door, push-out window, or roof hatch to a new school bus?

17. What is the current number and type of new school buses that have been ordered or delivered with additional emergency exits? What was the additional cost for the additional exits? What factors resulted in the decision to add emergency exits despite increased vehicle cost?

18. What are the cost implications if additional exits result in reduced passenger capacity for a vehicle? What practical experience have school bus purchasers and manufacturers had with respect to the subject of this question?

Encouraging Correct Use of Emergency Exits. Regardless of the number of safety features incorporated into a vehicle and how well they perform in the abstract, the effectiveness of these systems would be compromised if occupants did not know how to use the systems correctly. While NHTSA has no authority to regulate vehicle users or operations, part of an effective injury and fatality reduction and prevention program is proper use of safety features under appropriate circumstances. In an effort to promote safe school bus operations in the States, the agency publishes a manual titled "Program Guideline on Pupil Transportation Safety," which provides guidance to State governments on encouraging an maintaining pupil transportation safety. Emergency evacuation guidance is an issue addressed in this manual.

Currently, NHTSA is updating this manual to encompass specific recommendations regarding emergency evacuation drills for school bus drivers and occupants made by the Tenth National Conference on School Transportation. In accordance with these recommendations, NHTSA encourages several evacuation drills per school year that include practice and instruction in exiting from the bus through the emergency doors, and in opening door and window exits in emergencies. The Conference recommendations include detailed instructions for conducting these drills.

NHTSA believes that documented user experience with problems that arise

in a drill might supply the agency with valuable insight into the safety need for wider aisles, additional exits, more easily operated release mechanisms, clearer operation instructions, and the performance characteristics of various exit configurations.

19. Can school districts or pupil transport services supply documentation on their experiences with conducting emergency evacuation drills? How do push-out windows, standard doors, and rear emergency doors compare with each other for ease of access and egress in these drills?

20. What human factors affect correct use of emergency exits? For example, in a circumstance like the Kentucky crash, what is the likelihood that a young child will jump from a window five or six feet above the ground into surrounding darkness? What other human factors could affect proper use? Are there performance elements that the agency can introduce in a vehicle safety standard that could facilitate proper use?

Other Factors Incident to Requiring More Emergency Exits. There are other factors which, though important, are not easily categorized. Nonetheless, experience and data relating to these issues may provide useful information that will influence the agency's decision whether to propose amending Standard No. 217. Therefore, NHTSA is seeking comment on the following questions.

21. Would the additional weight that would be added to a vehicle by incorporating structures to support the new exits (preventing separation of exits in a crash environment) affect the vehicle's carrying capacity (passenger and equipment capacity)?

22. What new problems would be imposed on the driver to control student tampering with additional exits? Would push-out windows and roof exits increase vandalism? Should there be an alarm for each emergency exit to alert the driver of occupant tampering?

23. Given that in some crash situations there is a greater chance of fire for gas-fueled buses than for diesel-fueled ones, should there be different requirements for diesel-fueled buses? Why? Why not?

24. To what extent is storage space an issue in emergency egress? Do school buses need racks or compartments for storing items such as band equipment, athletic equipment, and picnic coolers so as to avoid blocking aisles and passenger egress in an emergency? What kinds of storage options currently are available in school buses?

Impact Assessments

Executive Order 12291 and Department of Transportation Regulatory Policies and Procedures. NHTSA has considered costs and other factors associated with this advance notice. The agency has determined that Executive Order 12291 is inapplicable because that Order applies to notices of proposed rulemaking and final rules only. However, NHTSA has determined that this advance notice is a significant rulemaking action under the Department of Transportation Regulatory Policies and Procedures because it concerns a matter on which there is substantial public interest.

If the agency determines to propose a rule requiring additional emergency exits on school buses, the approach may be to require additional emergency doors, additional push-out windows on either side of the bus, a windshield that will be the functional equivalent of a push-out window, or a combination of any of these. Before the agency can make a full assessment of the potential benefits of taking such an action, it is appropriate to obtain more detail on school bus accidents in order to ascertain better whether the lack of additional emergency exits is verifiably related to injuries and fatalities. In any event, NHTSA believes that there would be a benefit in requiring changes to Standard 217 if those changes might provide a higher level of safety than that which currently exists.

An approach the agency could take in requiring additional exits is to use the current minimum emergency exit requirements as a baseline, and propose a combination of exits such as those described in the preceding paragraph. Likely approaches the agency might take are adding one push-out window per side, and one roof hatch in the middle of the bus (Enhanced Level 1); or two push-out windows per side, and two roof hatches near the middle of the bus (Enhanced Level 2).

The agency has obtained cost estimates for retrofitting push-out windows (about $70.00 per exit), and roof hatches (about $300.00 per exit) in school buses. However, the cost of installing an exit in a school bus should decrease about 50 percent if the installation is part of the manufacturer's regular production run for new vehicles. The industry's variable cost increase per school bus for Enhanced Level 1 would be ([2 × $70.00] + $300)/2, or $220 per unit. During the last five years, about 30,000 vehicles certified as school buses were sold annually; therefore, the total annual cost would be $220 × 30,000, or $6,600,000. Making the same assumptions for Enhanced Level 2, the cost to the consumer would be about $440 per bus. Compared with the average cost of a new bus (approximately $40,000), these cost increases are minimal, and should not result in a significant negative effect on new school bus sales. (A Preliminary Regulatory Evaluation has been prepared, and is available in the Docket for this ANPRM.)

Executive Order 12612. NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency has determined that this advance notice does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The agency welcomes any comment on this issue.

Regulatory Flexibility Act. The Regulatory Flexibility Act does not apply to advance notices of proposed rulemaking. If the agency decides to issue a proposed rule, Regulatory Flexibility Act issues will be addressed.

Comments

The agency invites comments from interested persons on the questions presented in this advance notice and on any other relevant issues. The agency asks that comments on the proposal be submitted in writing, and requests (but does not require) that there be at least 10 copies of each comment. To encourage commenters to be concise, NHTSA requires that interested persons limit their remarks to no more than 15 pages (49 CFR 553.21). A commenter may attach any necessary supporting document without regard to the 15-page limit. All comments will be filed and available for examination in the Docket Section both before and after the comment closing date.

If a commenter wishes to submit certain information under a claim of confidentiality, then it must send three copies of the complete submission, including purportedly confidential business information, to the Chief Counsel, NHTSA, at the street address given in the "Address" caption. Further, the commenter must send seven copies from which the purportedly confidential information has been deleted to the Docket Section. Submit each request for confidentiality with a cover letter setting out the information specified in the agency's confidential business information regulation (49 CFR Part 512).

NHTSA will consider all comments received before the close of business on the comment closing date indicated in the "Dates" caption of this proposal. To the extent possible, NHTSA also will consider comments filed after the

closing date. Comments on the advance proposal will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the Docket as this information becomes available, and recommends that interested persons continue to examine the Docket for new material.

Persons who wish to be notified of the receipt of their comments in the Docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the Docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicle.

(15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 1, 1988.

Barry Felrice,

Associate Administator for Rulemaking.

[FR Doc. 88-25554 Filed 11-1-88; 12:14 pm]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 88-22: Notice 01]
RIN 2127-AA44

Flammability of Interior Materials; Advance Notice of Proposed Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice announces that the National Highway Traffic Safety Administration is considering the issuance of a proposal to upgrade Federal Motor Vehicle Safety Standard No. 302, *Flammability of Interior Materials*, as it applies to large buses (including school buses) over 10,000 pounds gross vehicle weight rating, and requests comments and information to assist the agency in determining whether to issue such a proposal. More specifically, this notice requests comments on possible proposals relating to matters such as self-extinguishing seating materials (i.e., materials which, after being ignited, cease to burn when the source of ignition is removed), toxicity of fumes given off by burning or smoldering seating materials, smoke from burning or smoldering materials and upgraded test procedures. The purpose of such proposals would be to reduce the risk of fire to bus occupants.

This notice comprises one part of NHTSA's comprehensive effort to assess the safety need to amend several of the motor vehicle safety standards relating to the crashworthiness and post-crash performance of buses in general and school buses in particular. These issues have received substantial public attention in recent months, following the tragic crash earlier this year of a compact pickup truck driver by a drunken motorist into a crowded church bus. Twenty-seven of the 67 occupants of the bus died as a result of smoke inhalation, and not from trauma or crash injuries resulting from the collision. Even though the Kentucky crash was a unique catastrophe and the safety record of school buses and buses is extremely positive overall, the agency believes it should consider whether there are improvements NHTSA could propose in its safety standards that might provide an even higher level of safety.

DATE: Comments on this notice must be received by the agency no later than January 3, 1989.

ADDRESS: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-5267. Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Jettner, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone: (202) 366-4917.

SUPPLEMENTARY INFORMATION: On May 14 of this year, a church bus collided head-on with a compact pickup truck in Carrollton, Kentucky. It was an extremely severe crash; the combined velocity of the two vehicles at the moment of impact was in excess of 100 miles an hour. During or shortly after the crash, a fire apparently started near or at the front bus entrance and was sustained by fuel from the wreckage. Twenty-seven occupants of the bus died as a result of smoke inhalation, and not from trauma or crash injuries resulting from the collision. The church bus, a used school bus designed to carry 66 passengers, was filled to capacity with children, teenagers and adults. There was reportedly at least one passenger sleeping on the bus floor and at least one cooler in the aisle.

The bus was manufactured in 1977 shortly before the April 1, 1977, effective date of the school bus safety standards NHTSA issued pursuant to the Schoolbus and Motor Vehicle Safety Amendments of 1974. It was used first as a school bus and later sold to a church. Thus, the bus was typical of the pre-1977 school bus body type which had been in use for many years, and presumably met Federal Motor Vehicle Safety Standard No. 302 for the flammability of interior materials (which took effect in 1972). The bus was not required to comply with the comprehensive school bus emergency exit requirements of Standard No. 217 which took effect on April 1, 1977, and apparently did not fully meet all aspects of that school bus standard.

In the aftermath of the Kentucky crash, NHTSA has initiated a series of efforts to assess the safety need to amend several of the motor vehicle safety standards relating to the crashworthiness of buses in general and that of school buses in particular. (Under NHTSA's regulations, a "bus" is a motor vehicle designed for carrying 11 or more persons (driver included). A "school bus" is a "bus" that is sold for purposes that include carrying students to and from school or related events (common carriers in urban transportation excluded). (49 CFR 571.3(b))

In taking these steps, NHTSA wishes to emphasize that the safety record of these vehicles has been remarkably good. The fatalities in the Kentucky crash were the first fatalities caused by fire in a school bus on the agency's record, since NHTSA began careful tracking of all traffic fatalities in 1975. Further, over the past 10 years, school bus occupants have sustained an average of 15 fatal injuries each year. While each of these fatalities is tragic, the number of school bus occupant fatalities is small compared to occupant fatalities in all other types of motor vehicles. In 1987, for example, there were 38,544 occupant deaths in motor vehicles other than school buses, which includes 5,663 deaths among children aged five to 18. These fatalities for 1987 are similar in number to those of recent years.

In view of the 3.3 billion miles travelled by school buses each year, the school bus is one of the safest means of travel. On a vehicle-mile basis, there are 0.5 school bus fatalities per hundred million vehicle miles travelled, compared to 1.9 occupant fatalities per hundred million vehicle miles in passenger cars—i.e., school buses are about four times safer than passenger cars on a per-vehicle mile basis. Moreover, since a school bus carries more occupants than a passenger car, the comparison on a per-passenger-mile

basis would be even more favorable for school buses.

The safety record for other types of buses is also extremely good. Occupant fatalities in inter-city and transit buses have average 18 per year over the past 10 years. During 1977–1987, there was one occupant fatality in a bus (other than a school bus) in a crash in which fire was the most harmful event.

As safe as today's buses are, it is incumbent upon NHTSA to inquire whether the bus fleet might be made safer still. NHTSA is issuing this notice to obtain factual information on available technologies, real-world environmental conditions and other factors that might help the agency decide what further steps should be taken to improve school bus safety and the steps that can be reasonably taken to reduce the risk of another Kentucky tragedy. The agency believes it is important to find out more about the *potential* for fire-related injury and death on buses and school buses, and whether reasonable measures can be taken to reduce that potential.

The agency is in the process of determining whether to amend Safety Standard No. 302, *Flammability of Interior Materials*, as it applies to large buses (including large school buses) over 10,000 pounds gross vehicle weight rating (GVWR). This advance notice requests comments to assist the agency in developing viable approaches towards possibly increasing the flammability resistance of materials used in large buses and large school buses. The agency iterates, however, that this advance notice does not intend to signify that a flammability standard different from or more stringent than Standard No. 302 would necessarily have been beneficial in lessening the devastation in the particular circumstances of the Kentucky tragedy. The agency realises that a more stringent flammability standard for the interior materials of that bus may in fact have had little if any effect on the outcome, given the intensity of the fuel fire and combination of other factors in the Kentucky crash which together made that crash catastrophic. For less intense fires, however, it is possible that strengthened flammability requirements could stop or slow the spread of fire to the point of reducing the risk of death or injury to occupants.

Among other issues, the agency is interested in obtaining information on the safety need to amend the current flammability requirements of Standard No. 302. To assess such a need, the agency will consider the magnitude and nature of the risk of fire-related death or injury to vehicle occupants. This risk is related to a variety of factors, including the ability of an occupant to escape from a burning vehicle, the time needed to escape, and the presence and suitability of exits and their ease of use.

Some of these factors are, in turn, related to each other. For example, escape time and effect of emergency exits are related. The amount of time an occupant of a vehicle needs to escape from a burning vehicle depends on the source and magnitude of the fire, the amount of smoke produced, the toxicity of the fumes, the flammability resistance of the vehicle interior materials and the speed and ease with which egress is possible from the vehicle. Factors relating to the latter include the number of passengers carried in the vehicle, and the number and size of doors, windows and other apertures and the ease of opening them.

NHTSA is addressing issues relating specifically to the adequacy of Federal minimum school bus emergency exit requirements in an ANPRM on Standard No. 217 published in today's edition of the **Federal Register**. In addition, an ANPRM to examine possible revisions to the Federal Motor Vehicle Safety Standard for fuel system integrity (FMVSS No. 301) of buses (including school buses) is expected to be issued shortly.

Because every one of the Federal motor vehicle safety standards is premised on a safety need for it, any proposal by the agency to amend Standard No. 302 must be justified by such a need. The agency wishes to explore whether such a need might exist for amending the requirements of this standard as they apply to buses (including school buses) over 10,000 pounds GVWR, and has issued this advance notice to request information pertaining to these vehicles.

The agency has addressed these large buses and school buses in this ANPRM to reduce the likelihood that a tragedy similar to the Kentucky crash can recur. NHTSA notes that exit from those vehicles requires more time than that needed for occupants to exit smaller buses, passenger cars, multipurpose passenger vehicles (MPV's) and trucks, all of which are more likely to have openings (such as doors or windows) for possible egress nearer to every person reasonably foreseen to be within the vehicle than in the case of large buses. The agency has thus limited this advance notice to issues relating to the fire protection of large buses and large school buses only. However, comments are requested below on including buses with GVWR of 10,000 or less in the scope of this notice.

This notice discusses a range of issues that NHTSA is considering in deciding whether to develop and issue a proposal relating to the flammability of materials in buses and makes a number of requests for opinions and data. For easy reference, the requests are numbered consecutively.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to statistical and cost data, and the source of such information.

This is an advance notice of proposed rulemaking, and no rule will be issued on this subject without further notice of proposed rulemaking and opportunity to comment.

Issues

Purpose of the standard

Standard No. 302, which became effective in September 1972, is intended "to reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, *especially those originating in the interior of the vehicle* from sources such as matches or cigarettes." 49 CFR Section 571.302, paragraph S2. (Emphasis added.) The standard seeks to allow the driver time to stop the vehicle, and if necessary for occupants to leave it, before injury occurs. The standard specifies a burn rate of not more than four inches per minute for materials used for certain specified components ("covered" components) in the occupant compartment, such as seat cushions, seat backs, seat belts, trim panels, compartment shelves, curtains, floor coverings and all interior materials that are designed to absorb energy on contact by occupants in the event of a crash. All portions of material from a specified "covered" component that are within one-half inch of the occupant compartment air space are subject to Standard No. 302's burn rate requirements.

To aid the agency in analyzing areas related to developing possible new approaches in addressing vehicle fires, the agency requests responses to the following questions:

1. Are there reasonable, practicable, cost-effective methods or technologies that the standard could incorporate which would make a vehicle interior fire-proof (i.e., non-ignitable) in the face of fuel-fed fires?

2. Do bus fires usually originate in the undercarriage or engine compartment, or

in the bus interior? Are bus fires usually consequences of a crash?

3. Should buses with a GVWR of 10,000 pounds or less be excluded from the scope of this advance notice?

4. Should buses other than school buses be treated differently than school buses for the purposes of this ANPRM?

New technology

The four-inch per minute burn rate requirement in Standard No. 302 for passenger cars, MPV's, trucks and buses was based in part on compromises between the goals of flame resistance and energy absorption and between the cost of meeting Standard No. 302 and of meeting the crashworthiness standards that had been issued for those motor vehicles but which were not yet in effect at the time Standard No. 302 was issued. (*See*, FR 289; January 8, 1971.) To aid the agency in analyzing issues relating to a possible change in that requirement, such as the availability of new technology for improved flammability resistance (ignitability; flame spread; smoke emissions; toxicity) *and* injury reduction (energy absorption; shock attenuation; strength and endurance), the agency requests information or comments on the following questions:

5. Are there new products which are used, or are available for use, or would be suitable for use in new bus interiors which would improve the flammability resistance of those interiors in school buses? Have these products been field tested, and if so, what has been the field experience? Have there been adverse experiences? If so, what was the situation, and what is the likelihood that such a situation would recur? What are the costs of these new products?

6. NHTSA believes the most critical area of flame spread in bus interiors would be the seat cushioning material, especially polyurethane foam padding What is the number or percentage of school buses manufactured with polyurethane cushions? What is the number or percentage of buses other than school buses manufactured with polyurethane cushions? How much of a reduction in the burn rate of the cushions would result by use of available materials less flammable than the polyurethane used in those seats?

7. NHTSA believes that any strengthening or broadening of Standard No. 302's requirements must achieve a net safety benefit. The agency requests information on the degree to which fire protection requirements can be revised without compromising other aspects of bus safety. For instance, the agency is concerned about how the toxicity of burning and smoldering materials may be increased by use of flame-retardant substances, and is requesting comments on this issue in the section entitled, "Chemical by-products." Similarly, the agency is concerned about what effect strengthened fire protection requirements could have on passenger crash protection features of school buses, which are mandated by Federal Motor Vehicle Safety Standard No. 222, *School Bus Passenger Seating and Crash Protection.* (Standard No. 222 incorporates a "compartmentalization" concept to provide passenger crash protection on school buses. The standard requires that large school buses protect school bus passengers by providing them with a protective "compartment" between well-padded seats that meet specified spacing and performance requirements.) A critical consideration in NHTSA's review of Standard No. 302 requirements is whether additional or strengthened fire protection requirements would reduce a manufacturer's ability to use materials currently enabling conformance with Standard No. 222, and thereby negatively affect the availability of buses that conform to the latter standard.

What are the flammability resistance characteristics of the interior padding of school bus seat backs and restraining barriers meeting compartmentalization (FMVSS No. 222) requirements? Should the burn rate of this material be reduced, and if so, what should those limits be?

8. Are there materials available for school bus seat padding and seat covers that perform well in terms of both flammability resistance and injury reduction, *and* which are cost and weight effective? Is there any performance or cost advantage in concentrating on either seat covers or cushion material, but not both?

Performance requirements

As already noted, Standard No. 302 specifies a burn rate of not more than four inches per minute for materials used for certain components in the interior passenger compartment. NHTSA determines compliance with the standard through a laboratory procedure, under which a specimen of material is mounted on a test frame, placed in a metal cabinet and exposed to flame from a bunsen burner.

To aid the agency in analyzing issues related to developing possible requirements for improved flammability resistance, the agency requests information or comments on the following questions:

9. It is desirable and feasible to develop new performance requirements, and test procedures to reflect the advances in flame resistant materials and flammability testing equipment since FMVSS No. 302 was first issued?

10. NHTSA believes Standard No. 302's compliance test should replicate real-world crash conditions as closely as reasonably possible. Should Standard No. 302 incorporate a systems approach in compliance testing, under which a complete bus, entire bus seat or a group of seats is tested instead of just specimens of the materials alone or sub-components of the seat alone?

11. Is the use of a horizontal burn rate appropriate, or should other alternatives, such as a vertical burn rate be considered? Should new tests be developed which might better simulate catastrophic fuel-fires? A substantial portion of the school bus materials subject to Standard No. 302 are installed closer to the vertical than the horizontal. Does state-of-the-art in math modelling permit predictions to be made of the burning behavior of various materials under simulated crash conditions?

12. In its consideration of the possible methods of increasing the flammability resistance of interior materials used in buses, NHTSA has examined the guidelines and regulations of other Federal agencies. Currently, the Federal Aviation Administration (FAA) incorporates a "fire blocking layer" concept in its flammability requirements. This concept developed out of the FAA's concern that severe thermal radiation produced in a full-scale aircraft cabin fire can break down a fire-retardent outer upholstery covering and penetrate into the foam (typically polyurethane) cushion material. The flammability of foam cushion material is of concern to FAA because of its determination that such material significantly contributes to the spread of aircraft cabin fire. In response, FAA developed a means of retarding flame spread through the use of "a thin layer of highly fire-resistant material to completely encapsulate and protect the larger mass of foam core seat cushion material from involvement in the cabin fire. This layer of fire-resistant material delays the onset of ignition and retards the involvement of the core in the fire." 49 FR 43188; October 26, 1984. FAA estimates that the use of fire-blocked aircraft seats could provide aircraft passengers with an additional 20 to 60 seconds to exit burning aircraft in impact survivable crashes.

FAA's fire-blocking requirements are performance-oriented, in that installation of fire-blocking materials in aircraft is *not* required by the standard. Instead, the standard specifies two sets of performance criteria for aircraft

seating materials. First, seat bottom and seat back cushion specimens, when subjected to an oil burner apparatus test, must have a burn length not exceeding 17 inches and average percentage weight loss may not exceed 10 percent. These criteria can be attained by use of fire-blocking materials. (The fire-blocking requirements are found in Appendix F to 14 CFR Part 25.)

Second, the FAA regulations also require seat cushion and padding materials to be self-extinguishing when tested vertically. The average burn length may not exceed eight inches, and flame time after removal of the flame source may not exceed 15 seconds. 14 CFR Section 25.853.

NHTSA requests comments on whether any of FAA's requirements for fire protection of seats and seat cushions would be practicable and effective for buses and school buses. Would typical bus seats, or other components, require design modifications to incorporate FAA's fire blocking layer concept? Are school bus seats vandalized (cut, torn, etc.) to an extent that the fire blocking material would be compromised? What would be the costs associated with the fire blocking layer concept as applied to buses and school buses? What effect, if any, would fire-blocking material have on compliance with the school bus compartmentalization requirements of FMVSS No. 222, under which manufacturers install heavily-padded seat backs and restraining barriers to reduce the likelihood of death and injury resulting from the impact of passengers with structures within the vehicle?

13. The Urban Mass Transportation Administration (UMTA) has in effect several guidelines, or recommended practices, for testing flammability and smoke emission characteristics of rapid rail transit and light rail transit vehicles (49 FR 32482; August 14, 1984). These guidelines specify different tests for various materials, including seat cushion material and floor coverings.

NHTSA requests comments on whether several or all of the UMTA recommended practices could also be effective in eliminating the safety hazards caused by fires in buses, while at the same time enabling seat cushions, padding and other materials used for school bus passenger crash protection to provide their safety benefits?

Burning and smoldering. Standard No. 302 does not address possible problems concerning the toxicity of emissions that are given off by the burning or smoldering of interior materials. Burning is flaming combustion, uniting the organic material with oxygen. Smoldering is nonflaming combustion. Both may propagate by a "front" or "wave" which involves air oxidation. Heat is liberated during either process. Both may be self-sustaining, or may require assistance from an adjacent energy source. Flexible polyurethane foams, even if fire-retardant, can smolder when in contact with a smoldering cotton fabric, and some polyurethane foams will smolder in a self-sustained mode (without help from a cotton fabric).

Some toxic products are produced in dangerous concentrations when the source material is burning and in small concentrations when the source is smoldering (e.g., carbon dioxide, sulphur dioxide). On the other hand, for some products, the inverse is true. For example, carbon monoxide, nitrogen oxides, and hydrogen cyanide are produced in dangerous concentrations during smoldering and in small concentrations during free burning of the source material. Some other products (e.g., halogen acids) are produced in dangerous concentrations during both free burning and smoldering conditions.

To aid the agency in analyzing issues related to developing a possible proposal relating to the toxicity of fumes produced by burning or smoldering materials in bus and school bus interior compartments, the agency requests information or comments on the following questions:

14. What factors determine when smoldering can occur?

15. What governs the propagation rate?

16. Under what conditions will a transition from smoldering to flaming occur?

Chemical by-products. Fires can result in burn injury and tissue destruction, asphyxiation and poisioning by gaseous products of combustion. A broad spectrum of gaseous compounds are typically produced during combustion, many of which are highly toxic to humans. The composition of the compounds is strongly dependent on many variables, such as the composition of the burnable components, the manner that these components are engulfed by the fire, and the gas flow pattern within a burning structure.

Some of the substances are potential asphyxiants (such as carbon monoxide) which displace oxygen from the hemoglobin and thus disturbs the normal oxygen delivery in the body. Other substances (such as hydrogen cyanide) interfere with specific enzymatic reactions. Hydrogen cyanide severely inhibits the body's oxygen transfer mechanism, causing tissues to become unable to remove oxygen from the blood.

There can also be combustion products from burning or smoldering bus and school seats that contain highly toxic agents affecting the central nervous system, and metal-containing soots. For example, foam material generally used in bus and school bus seat cushion construction and for padding may give off toxic fumes, dense smoke, and use oxygen at high rates when burning. Depending on the density and composition of the smoke, asphyxiation can occur in a few minutes, even when the burning or smoldering material burns at a rate within the limits set by Standard No. 302.

At this time, the National Academy of Sciences is working for UMTA to develop guidelines for the detection and prevention of toxic gases when a material burns. The Academy is bringing together a committee of industry and academic experts through the National Materials Advisory Board. These experts will review existing and proposed research technology and industry practice. Work done for other agencies such as the U.S. Navy and the Occupational Safety and Health Administration will be included in the review.

After review, these experts will recommend guidelines on the toxicity of combustion products of materials used in transit applications. They plan to assemble a report by the end of 1989 that contains these guidelines.

NHTS will carefully review the report when it is issued to determine whether and to what extent the guidelines could be incorporated into the Federal motor vehicle safety standards. In the meantime, however, NHTSA requests information or data on the following questions related to developing possible requirements to reduce the toxicity of burning materials on buses and school buses:

17. What are the chemical by-products created by burning or smoldering materials in the interior compartment of buses and school buses? In what amounts are these substances produced?

18. The agency believe that it should not consider more stringent burn rate requirements without also considering whether there is a necessary trade-off between stringency of fire protection requirements and the degree of danger posed by smoke or toxic gases from the burning of the materials used to comply with those requirements. The agency recognizes that, at the time Standard No. 302 was issued, the problem of toxic combustion by-products was closely

related to that of burn rate. In an early preamble for the standard, NHTSA said:

> Released of toxic gases is one of the injury-producing aspects of motor vehicle fires, and many of the common ways of treating materials to reduce their burn rates involve chemicals that produce highly poisonous gases such as hydrogen chloride and hydrogen cyanide * * * Until enough is known in this area to form the basis for a standard, and to establish the proper interaction between burn rate and toxicity, this uncertainty constitutes an additional reason for not requiring self-extinguishing materials. 36 FR 289: January 8, 1971.

What materials are currently available that might lessen the flammability of buses and that might also lessen the smoke and toxicity of gases emitted during vehicle fires? How readily available are these materials and what are their costs?

19. If requirements on toxicity were to be proposed, what requirements would be reasonable? What are the carcinogenic and mutagenic properties of fire retardant materials?

20. NHTSA is concerned whether there should be limits placed on the optical density of smoke and fumes from a fire, and if so, what those limits should be. Comments are requested on the ability of occupants of a bus or school bus to see their way to an exit or read instructions for opening an emergency exit in the event of a fire. What is the relationship, if any, between the density of the emissions and their toxicity?

General cost issues: The agency requests that cost estimates be provided on an incremental, per-seat basis. That is, what is the cost to build a bus seat using the new material versus the cost per seat using present materials. In addition to information and data on costs specifically relating to the materials and test procedures discussed in the preceding questions, the agency requests information on the following questions:

21. How would increased cost of new buses affect purchasing decisions? What is the threshold increase in cost above which the owners and operators of older buses (or older school buses) would be induced to retain those buses instead of acquiring new ones? What number or percentage of older buses would be retained, and by whom?

22. Should NHTSA require bus manufacturers to equip their vehicles with one or more fire extinguishers? Or is that subject more appropriately addressed by Federal or State government agencies with responsibility for operational safety and inspections?

If it is believed NHTSA should be require the fire extinguishers, comments are requested to suggest the number, type, and location(s) of the extinguishers NHTSA should consider requiring for buses. What percentage of existing buses and school buses have fire extinguishers? Where and how are such extinguishers mounted? How often have they been used? Are there any problems with vandalism? What are the costs, including maintenance and replacement?

23. Should automatic fire extinguishing systems be required for buses? If so, what type of system(s)?

24. Instead of an overall revision of Standard No. 302's requirements for buses and school buses, should the agency consider proposing new flammability requirements only for specific areas or components of the vehicles interior? For example, should bus seat cushions and seat backs be subject to more stringent requirements than other components of the vehicle, such as compartment shelves? If a targeted approach deserves further consideration by NHTSA, which areas or components should have the highest flammability resistance? How effective would each of these targeted approaches be as a countermeasure to vehicle fires? How would a targeted approach affect the costs associated with a possible upgrade to Standard No. 302?

25. The agency believes that diesel fuel may be less flammable than gasoline in certain types of crash situations. Should the agency consider different performance criteria for fire protection for gasoline-versus diesel-fueled buses based on the differences in the flammablity of their fuels?

Potential Regulatory Impacts

NHTSA has considered the potential burdens and benefits associated with requirements addressing the areas discussed above. This advance notice of proposed rulemaking is not subject to Executive Order 12291, since that order applies to notices of proposed rulemaking and final rules only. However, NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures. The advance notice concerns a matter in which there is substantial public interest. The agency has prepared a Preliminary Regulatory Evaluation (PRE) which addresses preliminary estimates of the costs and benefits of potential countermeasures that the agency is considering in this action. The evaluation is available in the docket.

This action has analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

NHTSA has considered the environmental implications of this action, in accordance with the National Environmental Policy Act. In the event a proposal is issued upgrading the flammability resistance of materials in buses and school buses, an Environmental Assessment or draft Environmental Impact Statement, as appropriate, will be prepared and placed in the public docket.

Comment

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15–page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued: November 1, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-2555 Filed 11-1-88; 12:14 p.m.]

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49 CFR Part 574

[Docket No. 70-12; Notice 26]

RIN 2127-AB18

Tire Identification and Recordkeeping; Changes to Voluntary Tire Registration Procedures

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates the rulemaking action begun by NHTSA when it published an advance notice of proposed rulemaking (ANPRM) requesting comments on methods that it believed might significantly increase the number of consumers who, having purchased tires from independent dealers and distributors, voluntarily register their names and addresses with the tire manufacturers. This registration information is used by tire manufacturers to contact consumers in the event of a recall of defective or noncomplying tires.

The same law that established the voluntary registration system for independent dealers also directed NHTSA to evaluate the effect that this new system had on tire registration. Based on that evaluation the agency had to determine whether to impose additional requirements to increase the rate of tire registration. Any determination to impose additional requirements must consider the risk to motor vehicle safety and the extent to which those additional requirements would increase the percentage of first purchasers that register their tires, as well as the costs and burdens that would be imposed on manufacturers, independent tire dealers and distributors by additional requirements.

This notice announces the agency's determination that implementation of any of the suggested steps in the ANPRM would not significantly increase the level of registration under the program for voluntary tire registration. Based on this determination, the agency is terminating its pending rulemaking to impose additional requirements in the voluntary tire registration procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Crash Avoidance Division, NHTSA, 400 Seventh Street SW., Washington DC 20590 (202-366-4805).

SUPPLEMENTARY INFORMATION:

I. History of Voluntary Tire Registration

A. Motor Vehicle Safety and Cost Savings Authorization Act of 1982

The Motor Vehicle Safety and Cost Savings Authorization Act of 1982 (96 STAT. 1620, Pub. L. 97-331) amended the National Traffic and Motor Vehicle Safety Act (the "Safety Act", 15 U.S.C. 1381 *et seq.*) by changing the tire registration requirements which apply to independent dealers and distributors. An independent dealer or distributor is one whose business in not owned or controlled by a tire manufacturer. In the committee reports regarding the Authorization Act of 1982, Congress noted that under the then current requirements for mandatory registration by all dealers and distributors, independent dealers registered only about 20 percent of the tires they sold. Those dealers whose business was owned or controlled by a tire manufacturer registered between 80 and 90 percent of the tires they sold. Given the wide disparity in tire registrations, Congress determined that an alternative method of tire registration should be instituted for tires sold by independent dealers.

Accordingly, section 158 of the Safety Act was amended to prohibit NHTSA from requiring independent dealers to comply with the requirements for mandatory registration by dealers. Given the high registration rates for tires sold by non-independent dealers, this amendment did not affect the registration procedures for stores owned or controlled by the tire manufacturers. Under the program for voluntary registration by consumers, the primary responsibility for registering tires sold by independent dealers is borne by the purchaser instead of the dealer. Section 158(b)(2)(B) directs NHTSA to require that independent dealers (1) fill in the tire identification number(s) of the tire(s) sold to a purchaser on a given registration form and then (2) give the form to the purchaser. The purchaser then may decide whether to register the tires by filling in his name and address by affixing a stamp and mailing the form to the tire manufacturer or designee.

Section 158(b)(3) of the Safety Act directed NHTSA to conduct an evaluation after two years of voluntary registration to determine whether the new procedures had increased the registration rate of tires sold by independent dealers. This section further requires the agency to determine whether to impose any additional requirements on the independent dealers or the tire manufacturers to produce higher levels of tire registration.

B. NHTSA's Evaluation Reports on Voluntary Tire Registration

NHTSA prepared a preliminary evaluation report on the voluntary tire registration system. A notice seeking public comment on the preliminary report was published at 50 FR 39214, September 27, 1985. The tentative conclusions of that report were as follows:

1. Registration rates for tires sold by independent dealers dropped from 18.1 percent under mandatory registration to 10.8 percent under voluntary registration. There was no comparable decline in the registration of tires sold by non-independent dealers still subject to mandatory registration procedures.

2. The rate of tires voluntarily registered by consumers may be closer to 8.4 percent than 10.8 percent because many of the registrations of tires sold by independent dealers were due to the use by some independent dealers of computers which automatically registered tires at the same time they recorded sales or due to the decision of other independent dealers to continue following the mandatory procedures.

3. Tire manufacturers and brand name owners provided the independent dealers with a sufficient number of registration forms to enable the dealers to give one to each tire purchaser.

4. There are no records of any registrations for tires sold by more than 70 percent of all independent dealers. Many of the other independent dealers had very low registration rates.

The agency's December 1987 report on voluntary tire registration came to the following conclusions:

1. Since the 1985 study, the registration rate for independent dealers has continued to decline: first to 10.2 percent between July 1985 and June 1986 and then to 9.3 percent between July 1986 and June 1987. Excluding computer assisted registration systems used at a

few independent dealers, the registration rate of independent dealers declined to 8 percent.

2. The registration rate for company owned stores remained over 86 percent during this period.

3. Five brands sold by independent dealers achieved registration rates that exceeded 20 percent. Nevertheless, much of this success can be attributed to the use of mandatory procedures instituted by the independent distributors selling these tire brands.

II. Advance Notice of Proposed Rulemaking

A. General Information Concerning ANPRM

In response to public comments concerning NHTSA's preliminary evaluation report on voluntary tire registration (50 FR 39214, September 27, 1965), the agency issued an Advance Notice of Proposed Rulemaking (ANPRM) which appeared at 51 FR 45916 (December 23, 1986). The ANPRM outlined the statutory and regulatory history of mandatory and voluntary tire registration. It also announced the agency's tentative determination that the existing level of voluntary tire registration, which the 1985 preliminary evaluation report estimated to be at 10.8 percent, was unacceptable. The ANPRM stated that the voluntary registration procedures cannot work if the independent dealers do not provide the registration forms which purchasers can complete and return to the tire manufacturers. NHTSA's evaluation showed that only about 22 percent of the consumers purchasing new tires from independent dealers remembered receiving the registration forms from the tire dealer. The evaluation also showed that in the case of 70 percent of all independent tire dealers for the largest tire manufacturer, no tires sold by those dealers have been registered under the voluntary registration procedures. These facts led the agency to conclude that many independent dealers are not routinely providing registration forms to tire purchasers.

In response to the statutory mandate in section 158(3)(B)(i), the ANPRM set forth four suggestions which the agency believed might significantly increase voluntary tire registration. The first suggestion was to amend Part 574 to require that the tire manufacturers include prepaid postage on the registration forms. This theoretically would have encouraged more purchasers to return the registration forms.

The second suggestion was for a public education campaign, which would have required that the Uniform Tire Quality Grading Standards (UTQGS) information pamphlet contain a brief explanation of the purpose of tire registration and instruct consumers to ask the tire dealer for a registration form. The manufacturers currently must publish these information pamphlets pursuant to 49 CFR 575.104. Under this suggestion, the agency was to include information on the purpose and importance of tire registration in its other consumer education activities.

The third suggestion was to establish a central clearing house to receive all registration forms distributed to consumers by independent dealers. All the registration forms provided by the tire manufacturers to independent dealers would have been addressed to this single clearing house, regardless of which manufacturer's tires were being registered. The clearing house then would have forwarded the registration forms it received to the appropriate manufacturer or its designee. The independent dealers were to keep just one form for all brands of tires sold.

The fourth suggestion was to rescind the regulatory requirements of Part 574 related to tire registration by dealers and distributors. In its place, the agency would have directed each tire manufacturer to devise its own method of compliance with the statutory requirements in 158(b)(1) that the tire manufacturers "cause the establishment and maintenance of records of the name and address of the first purchaser of each tire produced by the manufacturer."

The ANPRM asked for comments on each of the agency's four suggestions and ideas for other possible rulemaking actions that would significantly increase the registration rates for tires sold by independent dealers. In changing from a mandatory to a voluntary registration program, the legislative history indicates that Congress intended to increase the return of registration forms from independent tire dealers to a level exceeding 20 percent, which was the rate of registration under the mandatory registration program that Congress rescinded in 1982. (See H.R. No. 97–576, 97th Cong., 2d Sess at 8; S. Rep. No. 97–505, 97th Cong., 2d Sess., at 7 (1982))

Pursuant to section 158(b)(3)(iii) of the Safety Act, the commenters also were informed that NHTSA may order by rule additional requirements to the voluntary registration procedures "only if the (NHTSA) determines that such requirements are necessary to reduce the risk to motor vehicle safety, after considering (I) the cost of such requirements to manufacturers and the burden of such requirements upon dealers and distributors, as compared to the additional percentage of first purchasers of tires with respect to whom records would be established and maintained as a result of the imposition of such requirements; and (II) the extent to which dealers and distributors have encouraged first purchasers to register the tires, and the extent to which dealers and distributors have complied with (the voluntary registration procedures)."

The ANPRM further requested that the commenters provide information on the costs and operating procedures currently used by the tire manufacturers and brand name owners to register tires under the procedures specified in 49 CFR Part 574. The ANPRM sought comments on the following specific topics: 1. The precise process, including each step, used by the manufacturer or brand name owner to register tires, above and beyond the steps specified in 49 CFR Part 574; 2. The cost to the manufacturer or brand name owner for each step in the process listed in number 1; and 3. any problems experienced by the manufacturer or brand name owner in connection with its tire registration process.

NHTSA received 22 written comments from tire manufacturers, industry trade associations, citizens, and others in response to this ANPRM. The commenters addressed the voluntary tire registration program in general as well as the four suggestions expressly outlined in the ANPRM. Several commenters also offered other suggestions concerning methods to improve the rate of voluntary tire registration. The agency has considered all of these comments in reaching its conclusion to terminate the rulemaking. The most significant comments, along with the agency's response are set forth below.

B. General Comments on the ANPRM Concerning Voluntary Tire Registration

Various tire manufacturers, industry trade associations, and other commenters involved in the voluntary tire registration process strongly opposed voluntary tire registration in general and the four suggested additional steps in particular.

Several commenters stated that voluntary tire registration was not needed because the low rate of tire recalls indicated that the risk to motor vehicle safety is very small. In 1983, 98,546 tires were recalled; in 1984, 80,766 tires were recalled, and in 1985, 25,799 tires were recalled. Since 175,000,000 tires are produced annually, the percentage of tires recalled was about

6/100 of one percent in 1983, 5/100 of one percent in 1984, 1/100 of one percent in 1985, and 4/100 percent over the three year period. Several commenters agreed with the statement in the ANPRM that "This low recall rate indicates that the low tire registration rates have not resulted in the public frequently and unknowingly driving on tires that have been recalled by the manufacturer." 51 FR 45919. For instance, Metzeler Motorcycle Tire Co., which produces 180,000 tires a year, commented that it has never had to recall one of its tires. (NHTSA Docket No. 70–12–N26–008).

Many commenters mentioned that voluntary tire registration was ineffective and a needless cost because only 10.8 percent of those consumers who purchase tires from the independent dealers register their tires. They noted that NHTSA still must conduct a public notice recall campaign under section 153(c)(4) of the Safety Act to contact the other 90% of the tire purchasers. Several tire manufacturers and the National Tire Dealers and Retreaders Association (NTDRA) criticized the large expense required by the voluntary tire registration program. (NHTSA Docket No. 70–12–N26–011).

Cooper Tire also commented that the benefits of the suggested additional steps, based on NHTSA's baseline assumption that the suggested additional steps might increase voluntary tire registration from 10 to 15 percent, were not *significant*, because the mandatory registration program obtained a registration rate of 20 percent. Therefore, it argued that any proposal that only raised voluntary tire registration to 15 percent would not meet the requirement in section 158(b)(3)(B)(i) to significantly increase tire registration. (NHTSA Docket No. 70–12–N26–015).

Four individuals expressed their support for the voluntary tire registration program. Similarly, the American Automobile Association (AAA) "complimented" the agency on its recognition of the importance of the voluntary registration program to further motor vehicle safety.

Some commenters directed their attention to the specifically suggested additional steps highlighted in the ANPRM. The comments on these ideas will be discussed below in the sections which separately address the suggestions on prepaid postage, consumer information, the central clearing house, and the implementation of manufacturer plans to replace Part 574.

C. Suggestion for Requiring Registration Forms to Bear Prepaid Postage

After considering all the comments, surveys, and data, NHTSA concludes that the suggestion for requiring the manufacturers to include prepaid postage on the registration forms would not help to significantly increase the compliance level for the voluntary tire registration program. Additionally, the agency believes that several commenters may have been correct when they indicated that the ANPRM understated the cost of requiring the manufacturers to prepay for postage on the registration forms. Most importantly, NHTSA has determined that this suggestion fails to address the fundamental issue in implementing an effective voluntary tire registration program: i.e., it does not increase the number of first purchasers that are given the registration forms by the independent dealers. The agency's preliminary evaluation concluded that only 22 percent of the first purchasers were given these registration forms. Therefore, assuming that 100 percent of the purchasers who received these forms returned the cards, the rate of registration still would be only 22 percent. (As the agency noted in the ANPRM at 51 FR 45919, the agency does not believe that bringing enforcement actions to ensure that independent dealers are distributing the forms to the public is the best use which the agency can make of its limited enforcement budget. NHTSA concentrates its enforcement efforts under the Safety Act in those areas most directly related to vehicle or equipment safety.)

After extensive study, NHTSA agrees with several tire manufacturers that contended that this assumption of a 100 percent return rate overstates the typical return rate. Uniroyal commented that an unknown percentage of consumers are not knowledgeable or are apathetic about returning the registration cards. (NHTSA Docket No. 70–12–N26–017). The agency determined that the current mail in rate of return without prepaid postage is 40 percent. The agency further has found that only 31 percent of the registration cards typically are returned in tire recall campaigns, situations in which a defect is likely. Therefore, the agency concludes that prepaid postage would not result in a 100 percent response rate. Assuming *arguendo* that prepaid postage encourages half the people who currently do not return the registration card to do so now, then 70 percent of the cards would be returned. However, since only 22 percent of the tire purchasers receive the card, only 15 percent of the tires would be registered based on this assumption. Although a 15 percent return rate is an improvement over current registration rates, this rate falls well below the rate of 20 percent achieved with mandatory registration.

Even if the registration rates for first purchasers of tires increased to 15 percent, few additional owners of defective tires would be reached directly. In the years 1983–1985, only 205,111 tires were recalled. Therefore, assuming a 5 percentage point increase in voluntary tire registration, at most 10,256 additional tire purchasers would have been notified under the voluntary tire registration program. In fact, this potential number of tire purchasers is overstated because many tire purchasers buy their replacement tires at company owned stores which follow different tire registration regulations, some tire recalls involve tires on new motor vehicles, and some tire purchasers learn about a recall through indirect public recall notices. Therefore, the agency concludes that this suggestion would not significantly increase the rate of voluntary tire registration.

Additionally, one commenter stated that before implementing the prepaid postage suggestion, NHTSA should test its effectiveness because this suggestion is overly speculative, and there is no conclusive evidence that the tire purchaser would not put the postage on himself or herself. (NHTSA Docket No. 70–12–N26–013).

Along with the unlikelihood that prepaid postage would significantly increase voluntary registration, studies indicate that the cost of this proposal is fairly substantial. According to the formula in the ANPRM (51 FR 45922, December 23, 1986), total gross costs imposed on the tire manufacturers to require prepaid postage were estimated to be $2,275,000 for the first year, while the gross annual costs thereafter were estimated to be $2,205,000. The $2,275,000 in total gross costs for the first year were broken down as follows: $70,000 for the one time cost of printing new forms; $1,680,000 for the annual cost associated with prepaid postage; and $525,000 for the annual cost of handling and computers. To estimate the total net cost of this proposal, one would have to subtract the costs of postage then borne by consumers to register their tires. At the rates in effect when the ANPRM was written, consumers paid annual postage costs related to voluntary tire registration of $830,000. Therefore, the estimated total annual net cost associated with this option would be

$1,445,000 for the first year and $1,375,000 for subsequent years.

The ANPRM estimated the cost of prepaid postage as follows: Tire manufacturers each year distribute about 70 million voluntary tire registration forms to the independent tire dealers and distributors. The agency assumed a return rate of 15 percent, and prepaid postage would cost the manufacturer 16 cents for each form that is returned. If one multiplied 70 million forms by 15 percent by 16 cents, then the estimated cost of postage would be $1,680,000. The handling and computer costs were estimated to be 5 cents per each returned registration form. If one multiplied 70 million forms by a 15 percent rate of return by 5 cents per form, then the cost of handling would be $525,000.

Several commenters contended that the NHTSA study understates the cost of prepaid postage. For instance, Cooper Tire Co. estimated that the cost of Business Reply Mail (BRM) is 31¼ percent higher than the agency estimated in the ANPRM. First, it calculated that it costs 3/10 of a cent to print each form rather than the 1/10 of a cent that NHTSA estimated in the ANPRM. Second, Cooper's cost for BRM is higher than the agency's estimate because Cooper pays an annual permit and renewal fee of $50, an annual accounting fee of $160 at each post office where mail is to be returned, and the first class postage of 14¢ and a handling charge of 7¢ for each piece of BRM. (NHTSA Docket No.70–12–N26–015). NHTSA had estimated the handling charge to be 5¢ for each piece of returned mail. This translates into a cost differential of $210,000 per year. (70 million forms multiplied by 15 percent estimated rate of return multiplied by 2¢ per piece) Similarly, CMI Inc., a tire registration clearing house, stated that prepaid postage on the registration forms results in an additional cost of 8¢ per tire or 16¢ prepaid postage per form. It declared that this amount is more than double the cost per tire of the actual registration process. (NHTSA Docket No. 70–12–N26–013).

Only two commenters supported this proposal to require the tire manufacturers to pay for prepaid postage on the registration forms. The National Automotive Dealers Association (NADA) stated that "the prepayment of postage enables a greater return rate" and "such a form modification will result in no additional burden for dealers and in only a minuscule additional cost for manufacturers." (NHTSA Docket No. 70–12–N26–005). AAA merely stated that "consumers will be encouraged to mail the card" under the prepaid postage plan.

As explained above, NHTSA has concluded that the proposal to include prepaid postage on the tire registration forms given to voluntary dealers would not significantly increase the rate of registration under the voluntary tire registration plan. Moreover, the agency agrees with the majority of the commenters that the costs involved with prepaid postage exceed the benefits of having only a nominal number of additional first purchasers registered under the voluntary registration program.

D. Suggestion for Requiring References to Tire Registration in Pamphlets and Other Consumer Education Efforts

After considering all the comments, surveys, and data, NHTSA concludes that implementing additional requirements that direct manufacturers to include an explanation of the purpose behind tire registration in the UTQGS pamphlets and other consumer education activities would not significantly increase the level of voluntary tire registration. Moreover, the low registration rates do not constitute a significant safety problem that merits a large expenditure of scarce agency resources, especially since the agency and the tire manufacturers currently inform tire purchasers of the purpose for tire registration in their publications.

As with the prepaid postage proposal, the critical problem is that independent dealers typically do not provide the UTQGS and other consumer information materials to the tire purchaser. In a 1987 field investigation of 20 large private and franchise dealerships, NHTSA's Office of Enforcement discovered that 8 of 20 of the independent dealers did not have these brochures, 2 of 20 only had very limited information, 5 of 20 openly displayed the brochures, and the other 5 dealerships had these brochures available only upon request. (53 FR 16167–16168, May 5, 1988). Therefore, a regulation requiring the UTQGS brochures to contain information about tire registration would not significantly increase the level of first purchasers who register their tires.

As a sidenote, NHTSA's current consumer information brochure concerning tires contains an admonition that tires should be registered. Similarly, nearly all the tire manufacturers commented that they recognize the importance of informing consumers about the need for tire registration; and therefore they include information about tire registration in their sales and marketing material such as wall charts, counter displays, pamphlets, sales receipts, and warranties. In short, the ANPRM's suggestion to expand sources of public information concerning tire registration is not needed because it is already being done by NHTSA and the tire manufacturers.

The ANPRM and several commenters indicated that the cost of consumer education campaigns exceed their benefits. The ANPRM at page 45922 indicated that this suggestion would have annual costs of $30,000 for the agency and $490,000 for the manufacturers (assuming handling charges of 5¢ per item). The NTDRA reported that its own public education plan in 1984 concerning tire registration was "only minimally successful at best" and that any additional expenditures on public education would result in only nominal benefits, which would not provide the optimum use of NHTSA's budget. (NHTSA Docket No. 70–12–N26–011).

The ANPRM and commenters referred to other problems with public information campaigns. First, the ANPRM stated that the time required to inform and educate first purchasers about tire registration was a disadvantage to this suggestion. Second, the ANPRM stated that because some dealers fill in their tire registration forms improperly, a manufacturer would not be able to directly notify these first purchasers in the event of a recall, even if the consumer information program were successful and more registration forms were returned by these purchasers to the manufacturers.

As explained above, NHTSA has concluded that an expanded consumer education campaign explaining the benefits of tire registration is not needed. Providing more resources for such a campaign would not get additional information to the consumers without the cooperation of the independent dealers. Moreover, since the ANPRM was published, the agency and tire manufacturers have undertaken extensive public information campaigns to inform the public about tire registration. In short, NHTSA concludes that any expanded public information program would not significantly increase the number of first purchasers who receive the registration forms, without adding unnecessary costs to the agency and manufacturers and burdens on the independent dealers.

E. ANPRM Suggestion to Create a Central Clearing House for Tire Registration Forms

After considering all the comments, surveys, and data, NHTSA concludes

that requiring the establishment of a central clearing house would not significantly increase the effectiveness of the voluntary tire registration program. Under this suggestion, all registration forms provided by the tire manufacturers to the independent dealers would be addressed to this single clearing house. These identically addressed forms would be used for all sales, regardless of which manufacturer's tires were being registered. The clearing house would then forward the forms it received to the appropriate manufacturer or its designee. This plan would have allowed each independent dealer to keep just one form for all types of tires.

As with the prepaid postage and public information suggestions, there is no reason to believe that establishing a central clearing house would increase the number of first purchasers who receive the registration forms. An independent dealer who currently does not take the time to give a registration form to a purchaser still will not do so under this suggested measure. Moreover, the ANPRM stated that this suggestion was based on "anecdotal suggestions" and on its "intuitive reasonableness" rather than on hard data.

Although this suggested measure would theoretically improve the recordkeeping function, the agency and most commenters agree that this is not a problem. Firestone indicated that it already forwards any misdirected registration forms to the appropriate manufacturer and receives similarly misdirected forms from other manufacturers. (NHTSA Docket No. 70–12–N26–016).

Other commenters indicated that a central clearing house would raise several practical problems. First, this suggestion would increase the possibility of human error in the handling of registration forms and data transmission because it adds an additional step in the registration process. Second, this additional step would increase the time it takes to register tires. Third, such an entity would add needless costs to the voluntary registration program. The ANPRM estimated that aside from the one time start up cost of $70,000, a clearing house would resut in annual costs of $440,000 ($210,000 for cost of forwarding these forms from the clearing house to the manufacturer at 2¢ a form, and $230,000 in additional computer and handling costs).

In the ANPRM, NHTSA also noted that there would be problems in selecting a clearing house among the existing ones. The NTDRA agreed, stating that a federal agency should not grant such a monopoly to a single business, which would then possess much valuable marketing data. (NHTSA Docket No. 70–12–N26–012).

Two commenters, CIMS, an existing tire registration clearing house, and the NADA, favored the establishment of a central clearing house. CIMS stated that a single brand form addressed to a single clearing house would improve the effectiveness of the voluntary tire registration program. CIMS further commented that its experience with its "all brand clearing house form for multi-brand independent tire dealers clearly demonstrates that it eases the dealers' burden to comply and significantly increases the percentage of registration forms provided the purchaser." In the only quantitative data offered to prove the effectiveness of a central clearing house, CIMS wrote that "in a recently completed tire recall for one of CIMS' registration clients, over 50% of the direct notifications mailed were to purchasers who completed and forwarded to the clearing house a CIMS All-Brand form purchased and provided by the selling dealer." (NHTSA Docket No. 70–12–N26–013). Nevertheless, this isolated statistic fails to support the proposition that a central clearing house would significant increase the level of tire registration. In its next line, CIMS wrote that "Had that dealer not provided a CIMS All-Brand form *it is doubtful* that those tires would have been registered, and thus the purchaser not directly notified." (emphasis added). The commenter does not explain why such an assumption is reasonable, nor is it obvious that this assumption is valid. NADA failed to provide any quantitative evidence to support the proposition that establishing a central clearing house would result in a significant increase in tire registration.

CIMS and NADA commented that the cost of the clearing house is nominal. CIMS stated that its operation is 100 percent funded by the independent tire dealers through the purchase of the form. It estimated the cost to the independent dealers was less than 1¢ per each tire that is registered. This charge includes the cost of the form itself; imprinting the dealers name and address; and the sorting, processing and forwarding of the forms. CIMS concluded that the clearing house would impose no additional cost on the manufacturers since they would have to provide a form under any registration system. (NHTSA Docket No. 70–12–N26–013). The NADA concurred with CIMS, stating that "an effective clearinghouse will result in a net cost savings for tire manufacturers" because "the clearing house would be responsible for form printing, distribution, collection and reposition." Moreover, the NADA commented that a "single clearing house would be predictably more cost effective than the fifty existing manufacturer systems." (NHTSA Docket No. 70–12–N26–005). NHTSA is not convinced that the creation of a central clearing house is as cost efficient as CIMS and the NADA contend. Even if it were, NHTSA believes that the activity of a cental clearing house would not signficantly increase the level of first purchasers who register their tires.

As explained above, NHTSA has concluded that the suggestion for establishing a central clearing house which would process all registration forms distributed to first purchasers would not significantly increase the number of first purchasers who comply with the voluntary tire registration program. This suggestion probably would not significantly increase the number of first purchasers who actually receive the registration forms. Supporters of this suggestion did not provide sufficient quantitative data to establish that it would increase significantly the number of purchasers who register their tires. The evidence provided was only a single anecdote rather than a comprehensive study. Moreover, commenters indicated that there would be added inefficiency because a central clearing house would result in an additional layer of bureaucracy. Assuming *arguendo* that a clearing house could be cost effective, the agency nevertheless has decided not to propose this measure in light of these more compelling shortcomings.

F. ANPRM Suggestion To Rescind Part 574 and Require Manufacturers To Design Their Own Compliance Plans

After considering all the comments, surveys, and data, NHTSA has decided not to propose rescission of the regulatory requirements of Part 574 relating to tire registration by dealers and distributors, and in its place require tire manufacturers to devise their own methods of complying with the statuory requirement that the tire manufacturers establish their own voluntary tire registration plans. According to the ANPRM, the agency initially believed that this measure would allow the tire manufacturers greater flexibility in devising registration systems; would be workable because vehicle manufacturers obtain high registration rates, without the need for government regulation; would provide to the tire manufacturers an incentive to ensure an effective tire registration system; and

would decrease substantially the enforcement burden for the agency, since under the new system, it would oversee only 50 manufacturers rather than 50,000 independent dealers. (51 FR 49521; December 23, 1986)

The tire manufacturers and other commenters strongly opposed this suggested measure, while not a single commenter supported it. Most commenters contended that this suggestion would not significantly increase and might even decrease the level of tire registration because requiring the implementation of 50 plans would result in much confusion for the independent dealers and the first purchasers. This was the case in the early 1970s when Part 574 merely required manufacturers and retreaders to provide an unspecified "means" for recording the registration information. The absence of any specified guidelines resulted in registration information often being incorrectly recorded. (51 FR 45918, December 23, 1986, citing 38 FR 6398, March 9, 1973)

In view of the unanimity of the opposing comments and the agency's initial difficulties in establishing an effective registration system, the agency believes that the suggestion to require each tire manufacturer to device its own registration plan for voluntary registration is unlikely to provide any benefit. The combination of some 50 independent plans imposed on independent tire dealers' voluntary registration systems could well result in even lower registration rates than currently exist.

Several commenters argued that the tire manufacturers would be burdened greatly because compliance plans would be difficult to design. Cooper Tire noted that because the development of such compliance plans would require extensive use of attorneys, the costs to develop these plans would be ten to twenty times the estimate in the ANPRM. (NHTSA Docket No. 70–12–N26–015 at 5). Moreover, the independent dealers and distributors would face the additional burden of understanding and following 50 different compliance plans rather than one, with little or no commensurate safety benefit.

This suggestion also would have placed a great burden on NHTSA to review each tire manufacturer's compliance plan. Throughout the history of tire registration, the agency itself has faced many problems in designing an effective tire registration program. For instance, in the rulemaking to establish Part 574, the final rule rejected a requirement that the tire manufacturers include a contractual provision obligating the independent dealers or distributors to record the registration information. The final rule also did not include a provision in which tire manufacturers would be required to keep a record of the tire identification numbers of all tires they sold to dealers that sell tires directly to tire consumers. (35 FR 17257, November 10, 1970) Moreover, this initial rule led to so many different registration forms and techniques that NHTSA proposed that tire manufacturers use a standardized form. (38 FR 6398, March 9, 1973) This proposal was adopted as a final rule on June 3, 1974 (39 FR 19482). The Motor Vehicle Safety and Cost Savings Authorization Act of 1982, which relieved independent tire dealers and distributors of the obligation of adhering to mandatory registration procedures, further illustrates the long and complicated history of the tire registration program and Part 574. Given the agency's past problems in devising tire registration plans, it is reasonable to conclude that the 50 or more compliance plans formulated by the tire manufacturers would cause similar oversight problems for the agency.

The commenters criticized this suggested measure on several other grounds. The most commonly cited problem was that the independent tire dealers are independent businessmen over whom tire manufacturers have no authority. Several commenters further doubted that the tire manufacturers could enforce their registration plans as effectively as the agency. Cooper Tire Co. noted that while NHTSA had the authority to impose serious penalties under section 109(b) of the Safety Act, the tire manufacturers would have no authority to motivate the independent dealers to comply with their registration plans. (NHTSA Docket No. 70–12–N26–015).

Several commenters criticized the statement made in the ANPRM that the high registration rates for motor vehicles could be obtained for tires. They pointed out that unlike tires, motor vehicles are required to be registered by the states and are independently insured.

As explained above, NHTSA has concluded that the suggestion for rescinding Part 574 and in its place requiring each tire manufacturer to develop its own compliance plan would not significantly increase the rate of tire registration by independent dealers. While not one commenter supported this proposal, many commentors strongly denounced it. The agency agrees with their belief that requiring multiple registration plans could lead to a great deal of confusion for the tire manufacturers, the independent dealers, and the first purchasers. Moreover, requiring tire manufacturers to enforce the plan would be ineffective and raise serious legal questions. Therefore, the agency has decided not to propose this change in the voluntary tire registration program.

G. Additional Alternatives and Suggestions To Improve Voluntary Tire Registration

The agency would like to repeat its position regarding the institution of more enforcement actions against independent tire dealers. As the ANPRM (51 FR 45919, December 23, 1986) stated, this is not the best use that NHTSA can make of its limited enforcement budget. The agency focuses its enforcement efforts on those areas most directly and substantially related to motor vehicle or motor vehicle equipment safety. In the area of tires, NHTSA has directed its enforcement efforts toward the actual testing of tires for compliance with the applicable safety standards and examination of reports of tire failure while in service. While the agency believes tire registration is important for motor vehicle safety, its value is realized only after a determination has been made that a group of tires should be recalled.

The ANPRM also sought other suggestions that would help to significantly improve the level of compliance with the voluntary tire registration requirements of Part 574.

Jetzon Tire and Rubber Co. suggested that the tire registration form be incorporated into the tire label that already is required under 49 CFR 575.104(d)(1)(B)(2). The manufacturer could print, at low cost, a peel off form as part of its standard manufacturing procedures. The ultimate consumer could then peel off the registration form, fill it out, and mail it back to the manufacturer. (NHTSA Docket No. 70–12–N26–004) NHTSA notes that the proposal has the following shortcomings: First, because replacement tires are mounted on the vehicle by the tire dealer in most cases, the label is either removed or worn off before the tire purchaser ever sees it. Second, the tire purchaser must crawl under the vehicle to determine the tire registration number once it is mounted. The agency further notes that the tire dealer has little motivation to enter the tire numbers on the standard form as required by 49 CFR 574.8(a)(3). The agency has no knowledge of the cost or feasibility of automatically printing the tire number on the label to match the tire during the manufacturing process. Nor is it aware of the extent to which

dealers would better utilize that method to get the form to the tire purchaser.

Summit County (Ohio) suggested that the tire dealer could have an additional carbon copy of the sales slip, which could be forwarded to a clearing house or tire manufacturer. (NHTSA Docket No. 70–12–N26–006; see also NHTSA Docket No. 70–12–N26–008A). In order for this idea to be effective, the independent dealer would have to fill in the tire registration number on the sales slip. Such a procedure essentially is equivalent to the original mandatory registration requirements which the Authorization Act of 1982 prohibited by requiring the purchaser rather than the independent dealer to mail the form to the tire manufacturer.

Metzeler Motorcycle Tire Co. proposed that motorcycle tires be exempted from the registration requirements because motorcycle tires have an "extremely low recall rate" and a much shorter life than typical passenger vehicle tires. In arguing for the existence of the authority necessary for its requested exemption, Metzeler relied on the fact that retreaded tires were exempted from the registration requirements for these reasons in 1978. (NHTSA Docket No. 70–12–N26–008). NHTSA notes that it was Congress itself that provided for the exemption of retreaders from the tire registration requirements applicable to tire manufacturers. See 124 Cong. Rec. 32145 (September 28, 1978). There is no provision in section 158 or elsewhere in the Act for exempting anyone else from those requirements. Therefore, NHTSA is powerless to exempt motorcycle tires or any other type of tire from the voluntary tire registration requirements.

The Rubber Manufacturers Association repeated NTDRA's 1985 request for the General Accounting Office (GAO) to conduct a comprehensive study concerning the needs, cost, effectiveness, and practicality of tire registration. (NHTSA Docket No. 70–12–N26–009). NHTSA notes that a request for such a study by GAO can come from Congress only.

NTDRA proposed that the tire manufacturers devise a financial incentive program for the independent dealers which might result in an increase in the level of voluntary tire registration. (NHTSA Docket No. 70–12–N26–011). The agency has no authority to require the tire manufacturers to implement such an incentive program. However, the tire manufacturers may wish to investigate the tire registration incentive programs that some tire distributors currently use.

AAA suggested that the tire number be placed on the whitewall side of the tire and that all tires be mounted with the inflation valve side facing out. This greater visibility of the tire number would assist consumers during both registration and in the event of recall. (NHTSA Docket No. 70–12–N26–014). The agency rejected such a proposed regulation in 48 FR 19761, May 2, 1983. It reasoned that while tire manufacturers estimated that this requirement would cost between $4.25 million and $5.9 million, only 0.14% (13 comments out of 9500 received) of the respondents to an agency survey reported that having the tire identification number facing inward on some tires posed a problem. NHTSA concluded that adoption of this proposal would not significantly contribute to motor vehicle safety.

Cooper Tire suggested that NHTSA change the manner in which information about tire registration is disseminated to tire purchasers. It recommended that tire manufacturers place a tire placard on the glove box door or in the glove box of all motor vehicles. (NHTSA Docket No. 70–12–N26–15). The agency believes that this measure would not be very effective. First, the message would have to distinguish between independent and company controlled tire dealers because the voluntary tire registration program only applies to consumers who purchase replacement tires from independent dealers. Second, it is unlikely that a prospective purchaser of replacement tires would refer to a pamphlet or placard in the glove compartment because four or so years typically elapse between the purchase of a new vehicle and the purchase of the replacement tires for that vehicle.

After reviewing these suggestions and any supporting information, the agency concludes that these proposals would not result in a significant increase in the level of compliance with voluntary tire registration.

III. Conclusion

In conclusion, the agency emphasizes the following points. First, this is not a determination that the current level of registration by independent tire dealers is desirable or acceptable. In enacting section 158, Congress determined that a registration rate for the tire registration program of even 20 percent is not desirable or acceptable. Second, tire registration, which helps tire manufacturers notify the first purchasers of the tires about a recall, is an important element of motor vehicle safety if a tire proves to be defective. Third, Congress expressly referred to the "relationship of tire registration to highway safety" in their committee reports.

Therefore, the agency's decision to terminate the rulemaking should not be construed as a rejection of voluntary tire registration. Rather, the decision reflects the fact that the express terms of the Safety Act require that any change in the voluntary tire registration program must result in a significant increase in the level of registration. Several commenters to this rulemaking endorsed suggestions that they believed would increase voluntary tire registration. Nevertheless, after reviewing all the available data for each suggestion to increase the level of voluntary tire registration, NHTSA has determined that no commenter demonstrated that any suggestion would result in a significant increase in the level of voluntary tire registration. However, NHTSA's termination of rulemaking does not end its efforts to find means to increase the rate of voluntary tire registration.

IV. Determination

After reviewing all available data concerning voluntary tire registration, NHTSA has determined that no suggestion has been demonstrated to significantly increase the level of registration under voluntary tire registration. Therefore, this rulemaking action is terminated.

It should be noted, as stated previously, that none of the various registration schemes developed or proposed to date has enabled the agency to address the issue of tire recall effectively without the need for supplementary public announcement of such recall. In fact, the registration rate of consumers who purchase tires from independent dealers has never reached 20 percent—using mandatory or voluntary registration methods. The agency will therefore continue to make use of public announcements in cases of tire recalls.

However, the agency will continue to monitor tire registration rates, and will continue to search for other more effective methods of increasing tire registration rates for independent dealers.

(15 U.S.C. 1392, 1407, 1418; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on November 1, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88–25572 Filed 11–3–88; 8:45 am]

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Notices

Federal Register
Vol. 53, No. 214
Friday, November 4, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This document cancels the list of Performance Review Board members published November 10, 1987, 52 FR 43215, and gives notice of new Performance Review Board members.

EFFECTIVE DATE: November 11, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Connelly, Chief, Compensation, Employment and Performance Management Staff, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250, (202/447–2830).

The membership of the U.S. Department of Agriculture's Performance Review Boards include:

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Orville G. Bentley
Robert Beuley
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Judith A. Segal
Carol M. Seymour
Robert E. Sherman
Dallas R. Smith
Leon Snead
James E. Springfield
W. Scott Steele
William H. Tallent
Jack Van Mark
Roland R. Vautour
Lawrence Wachs
Ewen Wilson
Larry Wilson, Jr.

Alternates

Richard D. Allen
John H. Arnesen
William Bailey
Louis Bennett
John S. Bottum
Galen S. Bridge
Charles A. Bucy
Thomas J. Clark
Sonia F. Crow
Richard L. Duesterhaus
Gary R. Evans
Raymond R. Hancock
Clare I Harris
Glenn J. Hertzler, Jr.
Dr. Lonnie J. King
Edward B. Knipling
John P. Kratzke
Joseph J. Leo
George M. Leonard
Francis Lum
Philip L. Mackie
H. E. Maynard
Kenneth O. McDougall
Diane McIntyre
Everett L. Mosley
LaVern F. Neppl
Floy E. Payton
John W. Peterson
Ronald J. Prucha
William L. Rice
Robert R. Shaw
Larry B. Slagle
Ronnie O. Tharrington
Ann M. Veneman
Manly S. Wilder
Michael C. Wilkinson

November 1, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–25627 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–96–M

Forest Service

Noxious Weed Management; Lolo National Forest; Missoula, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead, Ravalli, and Lake Counties, MT; Revised Notice of Intent To Prepare an Environmental Impact Statement

Notice of intent to prepare an environmental impact statement on methods for controlling noxious weeds on the Lolo National Forest was published on page 44459 of the November 19, 1987 issue of the **Federal Register** (Vol. 52, No. 223). The expected filing date for the draft environmental impact statement (DEIS) given in that notice has passed.

The DEIS is still under preparation. It is now expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by May 26, 1989. EPA will publish a notice of availability of the DEIS in the **Federal Register**. The final environmental impact statement is scheduled for completion by August 25, 1989.

Questions about this environmental impact statement should be directed to Orville L. Daniels, Forest Supervisor, Lolo National Forest, at telephone number (406) 329–3750.

Date: October 25, 1988.

Orville L. Daniels,

Forest Supervisor.

[FR Doc. 88–25560 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on November 16, 1988. Committee meetings will also be held on this date. Public comment is welcome.

Time and Place: Presidential Board of Advisors on Private Sector Initiatives

Full Board Meeting: Wednesday, November 16, 1988, 2:30 p.m.–3:30 p.m., at the American Red Cross, National Headquarters, Board of Governors Room, 17th & E Streets NW., Washington, DC 20006

Committee Meetings: Wednesday, November 16, 1988, 1:15 p.m.–2:15 p.m., at the American Red Cross National Headquarters, Rooms to be Posted, 17th & E Streets NW., Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Date: October 28, 1988.

Robert H. Brumley,

General Counsel.

[FR Doc. 88–25539 Filed 11–3–88; 8:45 am]

BILLING CODE 3510–BW–M

International Trade Administration, Commerce

Export Trade Certificate of Review

AGENCY: Department of Commerce.

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review, Application #86–A0011.

SUMMARY: The Department of Commerce has issued an amendment to the export trade certificate of review of Millers' National Federation, granted on June 30, 1987 (52 FR 25622, July 8, 1987). The amendment was deemed submitted on August 2, 1988, and a summary of the application was published in the Federal Register on August 17, 1988 (53 FR 31076). This notice summarizes the revisions made to the certificate.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b) which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 86–00011, issued on June 30, 1987, is amended by revising the list of "Members" under the caption "Definitions" as follows:

1. Add Dixie Portland Flour Mills, Inc. as a "member."

2. Delete International Multifoods Corporation as a "Member."

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: October 31, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88–25540 Filed 11–3–88; 8:45 am]

BILLING CODE 3510–DR–M

National Institute of Standards and Technology

[Docket No. 80868–8168]

Approval of Five Federal Information Processing Standards (FIPS); Computer-Related Telecommunications Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved five new standards, which will be published as FIPS Publications 134–1, 149, 150, 154, and 155.

SUMMARY: On August 27, 1985 (50 FR 34755), December 27, 1985 (50 FR 53013), July 8, 1986 (51 FR 24749, 24750), and October 13, 1987 (52 FR 38025), notices were published in the Federal Register that five computer-related telecommunications standards were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NIST and the National Communications System (NCS). On the basis of this review, NIST recommended that the Secretary approve the standards as Federal Information Processing Standards (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

Each approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of each standard is provided in this notice.

EFFECTIVE DATE: These standards are effective April 21, 1989.

ADDRESS: Interested parties may purchase copies of these new standards, including the technical specifications portions, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies Section of the announcement portion of each standard.

FOR FURTHER INFORMATION CONTACT: Shirley Radack, National Computer and Telecommunications Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2833.

Ernest Ambler,

Director.

Date: October 28, 1988.

Federal Information Processing Standards Publication 134–1, Announcing the Standard for Coding and Modulation Requirements for 4,800 BIT/Second Modems

November 4, 1988.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

1. Name of standard. Coding and Modulation Requirements for 4,800 BIT/Second Modems (FIPS PUB 134–1).

2. Category of standard. Telecommunications Standard.

3. Explanation. This standard establishes coding and modulation requirements for 4,800 bit/s modems owned or leased by the Federal government for use over analog transmission channels. It is based upon techniques described in CCITT Recommendations V.27 bis, V.27 ter, and V.32. This standard supersedes former Federal Telecommunications (FED–STD) 1006 in its entirety.

4. Approving authority. Secretary of Commerce.

5. Maintenance agency. National Communications System, Office of Technology and Standards.

6. Cross index. Former Federal Standard (FED–STD) 1006A, Coding and Modulation Requirements for 4,800 Bit/Second Modems.

7. Related document. Federal Information Resources Management Regulation 201–6.1, Federal ADP and Telecommunications Standards.

8. Objectives. This standard is to facilitate interoperability between telecommunication facilities and systems of the Federal government.

9. Applicability. This standard shall be used by all Federal departments and agencies in the design and procurement of 4,800 bit/s modems for use with

switched or dedicated nominal 4 kHz channels.

10. Specifications. Affixed.

11. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding, effective April 21, 1989.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause the major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver request and any supporting and accompanying documents, with such deletions as the Agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to obtain copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 134–1 (FIPS PUB134–1), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Copies of the CCITT Recommendations V.27 and V.32 can be obtained from the National Technical Information Service.

Federal Information Processing Standards Publication 149, Accounting the Standard for General Aspects of Group 4 Facsimile Apparatus

November 4, 1988.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, P.L. 100–235.

1. Name of standard. General Aspects of Group 4 Facsimile Apparatus (FIPS PUB149).

2. Category of standard. Telecommunications Standard.

3. Explanation. This standard adopts Electronic Industries Association (EIA) Standard EIA–536–1988, which defines the facsimile coding schemes and their control functions for Group 4 facsimile apparatus.

4. Approving authority. Secretary of Commerce.

5. Maintenance agency. National Communications System, Office of Technology and Standards.

6. Cross index. a. Former Federal Standard (FED–STD) 1064, General Aspects of Group 4 Facsimile Apparatus.

b. EIA–536–1988, General Aspects of Group 4 Facsimile Apparatus.

7. Related documents. a. Federal Information Processing Standards Publication (FIPS PUB) 150, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus.

b. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

c. CCITT Reccommendation T.5, General Aspects of Group 4 Facsimile Apparatus, Malaga-Torremolinos, 1984.

d. CCITT Recommendation T.6, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus, Malaga-Torremolinos, 1984.

e. Federal Standard 1037A, Glossary of Telecommunication Terms.

8. Objectives. This standard is to facilitate interoperability between and among facsimile terminals within telecommunication facilities and systems of the Federal government.

9. Applicability. This standard shall be used by all Federal departments and agencies in the design, development, and procurement of facsimile terminals/systems.

10. Specifications. This standard adopts in whole the Electronics Industries Association (EIA) Standard EIA–536–1988, General Aspects of Group 4 Facsimile Apparatus.

11. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding, effective April 21, 1989.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Conflict with reference documents. Where the requirements stated in this standard conflict with any requirements in a referenced document, the requirements of this standard shall apply. The nature of the conflict between this standard and a referenced document shall be submitted in duplicate to the Director, National Computer and Telecommunications Laboratory, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

14. Special information. Group facsimile equipment shall conform to the specifications set forth in EIA–536–1988.

Group 4 Facsimile—A mode of black/white facsimile operation as defined in CCITT Recommendations T.5 and T.6. Note: Utilizes bandwidth compression techniques to transmit an essentially error-free 216 x 279 mm (8½ × 11 inches) document at a nominal resolution of 8 lines/mm in less than one minute over a public data network voice-grade circuit.

15. Where to obtain copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Electronic Industries Association.) When ordering, refer to Federal Information Processing Standards Publication 149 (FIPSPUB149), and title. Payment may be made by check, money order, purchase order, credit card or deposit account.

Copies of the CCITT Recommendations T.5 and T.6 (PB85–192631) can be obtained from the National Technical Information Service.

Federal Information Processing Standards Publication 150, Announcing the Standard for Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus

November 4, 1988.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

1. Name of Standard. Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus (FIPS PUB 150).

2. Category of Standard. Telecommunications Standard.

3. Explanation. This standard adopts Electronic Industries Association (EIA) Standard EIA–538–1988, which defines the facsimile coding schemes and their control functions for Group 4 facsimile apparatus.

4. Approving authority. Secretary of Commerce.

5. Maintenance agency. National Communications System, Office of Technology and Standards.

6. Cross index. a. Former Federal Standard (FED–STD) 1065, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus.

b. EIA–538–1988, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus.

7. Related Documents. a. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

b. CCITT Recommendation T.5, General Aspects of Group 4 Facsimile Apparatus, Malaga-Torremolinos, 1984.

c. CCITT Recommendation T.6, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus, Malaga-Torremolinos, 1984.

d. Federal Standard 1037A, Glossary of Telecommunication Terms.

8. Objectives. This standard is to facilitate interoperability between and among facsimile terminals within telecommunication facilities and systems of the Federal government.

9. Applicability. This standard shall be used by all Federal departments and agencies in the design, development, and procurement of facsimile terminals/systems.

10. Specifications. This standard adopts in whole the Electronics Industries Association (EIA) Standard EIA–538–1988, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus.

11. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding, effective April 21, 1989.

12. Waivers.—Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such delegations as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement

documentation and retained by the agency.

13. Conflict with referenced documents. Where the requirements stated in this standard conflict with any requirements in a referenced document, the requirements of this standard shall apply. The nature of the conflict between this standard and a referenced document shall be submitted in duplicate to the Director, National Computer and Telecommunications Laboratory, Technology Building, Room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

14. Special information. Group 4 facsimile equipments shall conform to the specifications set forth in EIA-538-1988.

Group 4 Facsimile—A mode of black/white facsimile operations as defined in CCITT Recommendations T.5 and T.6, which utilizes bandwidth compression techniques to transmit an essentially error-free 215 x 279 mm (8½ x 11 inches) document at a nominal resolution of 8 lines/mm in less than one minute over a public data network voice-grade circuit.

15. Where to obtain copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Electronic Industries Association.) When ordering, refer to Federal Information Processing Standards Publication 150 (FIPSPUB150), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Copies of the CCITT Recommendations T.5 and T.6 (PB85-192631) can be obtained from the National Technical Information Service.

Federal Information Processing Standards Publication 154, Announcing the Standard for High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment

November 4, 1988.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the Natonal Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100-235.

1. Name of standard. High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment (FIPS PUB 154).

2. Category of standard. Telecommunications Standard.

3. Explanation. This standard adopts Electronic Industries Association (EIA) Standard EIA-530-1987, which specifies the interconnection of data terminal equipment (DTE) and data circuit-terminating equipment (DCE) employing serial binary data interchange circuits with control information exchanged on separate control circuits. In particular, this standard defines the signal characteristics, interface mechanical characteristics, functional description of interchange circuits, and standard interfaces for selected communication system configurations. The electrical characteristics of the interchange circuits are specified by reference to Electronic Industries Association (EIA) standard EIA-422-A (FED-STD-1020A) and EIA-423-A (FED-STD-1030A).

4. Approving authority. Secretary of Commerce.

5. Maintenance agency. National Communications System, Office of Technology and Standards.

6. Cross index. a. Former Federal Standard (FED-STD) 1032, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment.

b. EIA-530, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment.

7. Related documents. The following documents of the issue in effect on the date of invitation for bids or requests for proposals form a part of this standard to the extent specified herein: a. FIPS PUB 138, Electrical Characteristics of Balanced Voltage Digital Interface Circuits (EIA-422A) (former Federal Standard 1020A).

b. FIPS PUB 142, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits (EIA-423A) (former Federal Standard 1030A).

c. FIPS PUB 143, General Pyrpose 37-Position and 9-Position Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment (EIA-449) (former Interim Federal Standard 001031).

d. EIA-422A, Electrical Characteristics of Balanced Voltage Digital Interface Circuits.

e. EIA-423-A, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits.

f. EIA-449, General Purpose 37-Position and 9-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment Employing Serial Binary Data Interchange.

g. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.

8. Objectives. This standard is to facilitate interoperability between telecommunication facilities and systems of the Federal Government and compatibility of these facilities and systems at the computer-communications interface with data processing equipment (systems) of the Federal Government.

9. Applicability. This standard shall be used by all Federal departments and agencies in the design and procurement of telecommunication equipment employing high speed (20,000 to 2,000,000 bits per second) interchange between DTEs and DCEs. This standard may optionally be used at speeds lower than 20 Kb/s. It is highly recommended in the speed range of 10 to 20 Kb/s for new systems that are likely to be upgraded to higher speeds, or when both sides of the interface are covered by one procurement action. This standard will not interoperate with equipment using EIA-232 electrical characteristics. Departments and agencies with a requirement to be compatible with the 37-position and 9-position interface specified in FIPS 143 (former Interim FED-STD-001031) (i.e., EIA-449) may continue to use this Standard, but new systems must conform to FIPS 154 (former FED-STD-1032).

10. Specifications. This standard adopts in whole Electronic Industries Association (EIA) Standard EIA-530-1987, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment.

11. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding, effective April 21, 1989.

12. Waivers. Under certain exceptional circumstances, the heads of -Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard

cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Conflict with referenced documents. Where the requirements stated in this standard conflict with any requirements in a referenced document, the requirements of this standard shall apply. The nature of the conflict between this standard and a referenced document shall be submitted in duplicate to the Director, National Computer and Telecommunications Laboratory, Technology Building, Room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

14. Special information. The electrical, mechanical, and functional interface and interchange circuits shall conform to EIA-530-1987.

15. Where to obtain copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Electronic Industries Association.) When ordering, refer to Federal Information Processing Standards Publication 154 (FIPSPUB154), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Copies of the EIA standards can be obtained from the Electronic Industries Association, 2001 Eye Street NW., Washington, DC 20006.

Federal Information Processing Standards Publication 155, Announcing the Standard for Data Communication Systems and Services User-Oriented Performance Measurement Methods

November 4, 1988.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100-235.

1. Name of standard. Data Communication Systems and Services User-Oriented Performance Measurement Methods (FIPS PUB 155).

2. Category of standard. Telecommunications Standard.

3. Explanation. This standard adopts American National Standard X3.141-1987, which specifies uniform methods of measuring the performance of data communication services at digital interfaces between data communication systems and their users. These methods may be used to characterize the performance of any data communication service in accordance with the user-oriented performance parameters defined in a companion standard, American National Standard X3.102-1983, which has been adopted as FIPS 144 (former Federal Standard 1033).

4. *Approving authority.* Secretary of Commerce.

5. *Maintenace agency.* National Communications System, Office of Technology and Standards.

6. *Cross index.* a. Former Federal Standard (FED-STD) 1043, Data Communication Systems and Services User-Oriented Performance Measurement Methods.

b. ANSI X3.141-1987, Data Communication Systems and Services—Measurement Methods for User-Oriented Performance Evaluation.

7. *Related documents.* a. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.

b. ANSI X3.102-1983, Data Communication Systems and Services User-Oriented Performance Parameters.

8. *Objectives.* This standard is to provide Federal departments and agencies with uniform means of measuring the performance of data communication systems and services as perceived by end users. Performance measurements conducted in accordance with this standard are intended to be used in making communication management decisions concerning Federal acquisition and use of data communication systems and services.

9. *Applicability.* The measurement methods specified in American National Standard X3.141-1987 may be used in achieving a wide variety of measurement objectives, including service of network performance characterization, comparison of observed performance values with specifications, and the determination of system design, operation, or usage effects. They may be used in comprehensive experiments in which values for all standard parameters are determined or, with appropriate simplification, in very selective experiments—for example, the measurement of a single parameter such as Bit Error Probability. They may be applied at any pair of digital interfaces.

10. *Specifications.* This standard adopts in whole the American National Standard X3.141-1987, Data Communication System and Service—Measurement Methods for User-Oriented Performance Evaluation.

11. *Implementation.* The use of this standard by Federal department and agencies is compulsory and binding, effective April 21, 1989.

American National Standard X3.141-1987 shall be used by all Federal depa rtments and agencies in conducting data communication performance measurements intended to determine values for the user-oriented performance parameters defined in American National Standard X3.102-1983.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designate pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Goverment-wide savings.

Agency heads may act upon a written waiver requests containing the information detailed above. Agency heads may also act without a written

waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver detemrination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Conflict with referenced documents.* Where the requirements stated in this standard conflict with any requirements in a referenced document, the requirements of this standard shall apply. The nature of the conflict between this standard and a reference document shall be submitted in duplicate to the Director, National Computer and Telecommunications Laboratory, Technology Building, Room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

14. *Where to obtain copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 155 (FIPSPUB155), and title. Payments may be made by check, money order, purchase order, credit card, or deposit account.

[FR Doc. 88-25417 Filed 11-3-88; 8:45 am]
BILLING CODE 3510-CN-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Detailing of Coverage of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

October 31, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs listing part and merged categories.

EFFECTIVE DATE: November 7, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: The existing visa requirements cover part and merged categories subject to the bilateral agreement of August 14, 1986, as amended, between the Governments of the United States and Hong Kong.

A copy of the agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 48 FR 2400, published on January 19, 1983, and 51 FR 27235, published on July 30, 1986.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1983, as amended on July 25, 1986, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, solid blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong, for which the Government of Hong Kong has not issued an appropriate visa.

Effective on November 7, 1988, the directive of January 14, 1983, as amended, is amended further to include the following list of part and merged categories established in the bilateral agreement of August 14, 1986, as amended:

Part and Merged Categories

225/317/326	
226/313	
333/334	
338/339 (1) [1]	(tank tops)
338/339 [2]	(shirts and blouses other than tank tops, knit)
347/348	
359 (1) [3]	(coveralls, overalls, jumpsuits)
359 (2) [4]	(Outer vests)
359 [5]	(other than coveralls, overalls, jumpsuits, vests)
369 (1) [6]	(shop towels)
369 [7]	(other than shop towels)
443/643/843 (1)	(made-to-measure suits, men's and boys')
444/644/844 (1)	(made-to-measure suits, women's and girls')
445/446	
447/448	
633/634/635	
633/634	
638/639	
645/646	
659 (1) [8]	(coveralls, overalls, jumpsuits)
659 (2) [9]	(swimsuits)
659 [10]	(other than coveralls, overalls, jumpsuits, swimsuits)
845 (1) [11]	(sweaters made in Hong Kong)
845 (2) [12]	(sweaters assembled in Hong Kong from knit-to-shaper component parts knitted elsewhere)
846 (1) [13]	(sweaters made in Hong Kong)
846 (2) [14]	(sweaters assembled in Hong Kong from knit-to-shape component parts knitted elsewhere)

[1] In Categories 338/339(1),, only TSUSA numbers 381.0230, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.2806, 384.2810, 384.2812 and 384.2814.

[2] In Category 338/339, all TSUSA numbers except 381.0230, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.2806, 384.2810, 384.2812 and 384.2814 in Category 338/339(1).

[3] In Category 359(1), only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222.

[4] In Category 359(2), only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

[5] In Category 359, all TSUSA numbers except 381.0822, 381.6510, 384.0928 and 384.5222 in Category 359(1); and 381.0258, 381.0554, 381.3949, 381.5800,

381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422 in Category 359(2).

[6] In Category 369(1), only TSUSA number 366.2840.

[7] In Category 369, only TSUSA numbers except except 366.2840.

[8] In Category 659(1), only TSUSA numbers 381.3825, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[9] In Category 659(2), only TSUSA numbers 381.2340, 381.3170, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9530.

[10] In Category 659, all TSUSA numbers in 659 except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310 in Category 651(1); and 381.2340, 381.3170, 381.9100, 381.9570, 384.1700 384.2339, 384.8300, 384.8400 and 384.9353 in Category 659(2).

[11] In Category 845(1), only TSUSA numbers 381.3563, 381.6688, 381.9987, 384.2736, 384.5317 and 384.9695.

[12] In Category 845(2), only TSUSA numbers 381.3578, 381.6685, 381.9985, 384.2735, 384.5316 and 384.9694.

[13] In Category 846(1), only TSUSA numbers 381.3576, 381.6557 384.2734 and 384.7782.

[14] In Category 846(2), only TSUSA numbers 381.3574, 381.6554, 384.2733 and 384.7781.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25538 Filed 11-3-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 5, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1988, December 10, 1987 (52 FR 46926):

Commodity Index, Elevation 1005-01-134-3621.

Service Commissary Shelf Stocking, Custodial and Warehouse Service, Ellsworth Air Force Base, South Dakota.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-25568 Filed 11-3-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988 Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 5, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 5, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 29511) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

No comments were received concerning the proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1988: Cover, Generator Set 6115-00-941-1655.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-25569 Filed 11-3-88; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures trading Commission ("Commission") previously published in the Federal Register a proposal of the Chicago Mercantile Exchange ("CME") for designation as a contract market in futures on the Morgan Stanley Capital International United Kingdom Stock Index. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before November 21, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME Morgan Stanley United Kingdom Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading

Commission, 2033 K Street, NW. Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: On May 19 and September 2, 1988, the Commission published in the Federal Register, for 60-day and 15-day comment periods, respectively, notices of availability of the CME's proposed terms and conditions for the U.K. stock index futures contract (53 FR 17969 and 53 FR 34140). In an October 25, 1988 letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9 Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on November 1, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–25531 Filed 11–3–88; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Equal Opportunity Management Institute Board of Visitors; Meeting

AGENCY: Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV), DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV). The purpose of the DEOMI BOV is to serve as an external source of expertise to ensure periodic review of the objectives, policies, and operations of DEOMI. The Board meets semiannually.

DATE: November 18–19, 1988 (Agenda follows).

ADDRESS: Defense Equal Opportunity Management Institute (DEOMI), Bldg 559, Patrick, AFB, Florida, 32925–6685.

AGENDA: Sessions will be conducted as indicated below and will be open to the public.

Friday, November 18, 1988

8:00 a.m.—8:30 a.m. Address to Students and Faculty
8:40 a.m.—10:15 a.m. Presentation of Briefing for New DACOWITS Members
10:15 a.m.—10:45 a.m. Old Business (Review of Report from the Previous Meeting)
11:30 a.m.—12:45 p.m. Luncheon with Students and Staff
1:00 p.m.—4:00 p.m. Presentation of Information Papers

Saturday, November 19, 1988

8:00 a.m.—10:00 a.m. Executive Session
10:15 a.m.—10:45 a.m. Finalize Formal Comments and Recommendations
10:45 a.m.—11:00 a.m. Closing Remarks

FOR FURTHER INFORMATION CONTACT: Colonel E. E. Wiggins, USAF, Commandant, Defense Equal Opportunity Management Institute, Patrick AFB, Florida, 32925–6685; telephone (407) 494–6976.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the Board of Visitors meeting:

(1) Members of the public are permitted to attend all Board sessions conducted in pursuit of the Board's charter.

(2) Interested persons may submit written statements for consideration by the Board and/or make oral presentations of same during the meeting.

(3) Persons desiring to make oral presentations or submit written statements to the Board must notify the point of contact listed above no later than November 14, 1988.

(4) Length and number of oral presentations to be made will depend on the number of such requests received.

(5) Persons submitting written statements only for inclusion in the minutes of the meeting must submit one copy no later than five days after the meeting adjourns.

(6) Other new items from members of the public may be presented in writing to any DEOMI BOV member for transmittal to the BOV Chair or Commandant, DEOMI, to consider.

(7) Members of the public will not be permitted to enter into oral discussions conducted by the Board members at any of the meeting sessions; however, they will be permitted to reply to any questions directed to them by the members of the Board.

(8) Members of the public will be permitted to orally question any scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 1, 1988.

[FR Doc. 88–25623 Filed 11–3–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Physical Optics Corp.; Intent to Grant Exclusive Patent License

Pursuant to the provisions of Part 101–4 of Title 41, Code of Federal Regulations, which implements Pub. L. 96–517, the Department of the Air Force announces its intention to grant to the Physical Optics Corporation, 2525 W. 237th Street, Torrance, California 90505, a corporation of California, an exclusive royalty-bearing license under U.S. Patent No. 4,563,057 issued 7 January 1987 in the names of Jacques W. Ludman, Joseph L. Horner and Henry J. Caulfield for "Fiber Optic Cable Connector."

The license will be granted unless any objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the publication of this notice.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324–1000, Telephone No. (202) 475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–25556 Filed 11–3–88; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

National Board for the Promotion of Rifle Practice; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). Announcement is made of the following committee meeting:

Name of Committee: National Board for the Promotion of Rifle Practice.

Date of Meeting: 6 December 1988.

Place: Ramada Renaissance Hotel, Washington Dulles International Airport, 13869–71 Park Center Road, Herndon, Virginia 22071.

Time: 1345–1600.

Proposed Agenda:

1. Open Prayer and Pledge of Allegiance to the Flag
2. Federal Register Notice of the Meeting
3. Roll Call
4. Approval of previous Board minutes
5. Status of regulations
6. Update of ammunition used in EIC Matches
7. Update on Conduct of the 1988 National Matches
8. Report on revision of the Small Arms Firing School Training
9. Report on the 1989 National Matches
10. Report on the Budget review/ presentation
11. Report on transfer of skills from Air Rifles
12. M1 Sales
13. President's 100
14. New Business
15. Closing Prayer

This meeting is open to the public.

Persons desiring to attend the meeting should contact Mr. Dennis W. Galoci or Ms. Rita G. Cooper at (202) 272–0810 prior to 21 November 1988 to arrange admission.

M.S. Gilchrist,

Colonel, Armor, Executive Officer, NBPRP.

[FR Doc. 88–25606 Filed 11–3–88; 8:45 am]

BILLING CODE 3710–08–M

National Board for the Promotion of Rifle Practice Budget Committee; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463), announcement is made of the following committee meeting:

Name of Committee: National Board for the Promotion of Rifle Practice Budget Committee.

Date of Meeting: 6 December 1988.

Place: Ramada Renaissance Hotel, Washington Dulles International Airport, 13869–71 Park Center Road, Herndon, Virginia 22071.

Time: 0390–1130.

Proposed Agenda:

1. Federal Register Notice of the Meeting
2. Roll Call
3. Approval of previous Board minutes
4. Review of Fiscal Year 1988 Budget
5. Expenditure Restrictions
6. Update Support Agreements
7. Fiscal Year 1989 Budget and Obligation Plan
8. Fiscal Year 1990–91 and Out-Year Budgets
9. Purchase of accounterments and supplies
10. Proposed upgrade of Camp Perry and Facilities
11. Realignment of mail cost responsibilities

This meeting is open to the public.

Persons desiring to attend the meeting should contact Mr. Dennis W. Galoci or Ms. Rita G. Cooper at (202) 272–0810 prior to 21 November 1988 to arrange admission.

M. S. Gilchrist,

Colonel, Armor Executive Officer, NBPRP.

[FR Doc. 88–25607 Filed 11–3–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With DeMenno-Kerdoon

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with DeMenno-Kerdoon. The agreement proposes to resolve matters relating to DeMenno-Kerdoon's compliance with federal petroleum price and allocation regulations for the period August 19, 1973 through January 27, 1981. If this Consent Order is approved, DeMenno-Kerdoon will pay a minimum of $150,000 plus interest, as well as specified percentages of its annual adjusted net income for the five consecutive fiscal years commencing with the fiscal year beginning November 1, 1989. The maximum amount payable under the Consent Order is $3 million.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this notice. ERA will consider the submissions received from the public in determining whether to reject the settlement, accept the settlement and issue a final Order, or renegotiate the agreement and, if successful, issue the modified agreement as a final Order. DOE's final decision will be published in the Federal Register, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., RG–30, Washington, DC 20585 (202) 586–8900.

Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office.

SUPPLEMENTARY INFORMATION:

I. Introduction

ERA audited DeMenno-Kerdoon's compliance with the Federal petroleum price and allocation regulations as a refiner engaged in, *inter alia*, the business of purchasing and refining crude oil, and selling refined petroleum products. On the basis of its audit findings, ERA issued a Proposed Remedial Order (PRO) to the firm and another refiner on December 8, 1986. This PRO, which is now pending before OHA, alleges that during the period November 1976 through may 1977 DeMenno-Kerdoon improperly reported volumes of crude oil under the Crude Oil Allocation Program (Entitlements Program), set forth at 10 CFR 211.66 and 211.67, in violation of those regulations and 10 CFR 205.202.

ERA's audit of DeMenno-Kerdoon also indicated that in a number of

transactions during the period January 1979 through December 1980 the firm failed to report certain volumes of controlled crude oil which it had processed at its refinery. Further, it was found that DeMenno-Kerdoon had reported certain volumes of uncontrolled crude oil to DOE without having obtained proper certifications. These practices appear to have violated the provisions of 10 CFR 211.66, 212.131 and 205.202. A PRO was issued concerning these matters on December 31, 1986, and following additional analysis by ERA, was subsequently withdrawn on August 16, 1988.

In the negotiation process leading to the proposed settlement, ERA analyzed the results of the audits and the nature of the alleged regulatory violations, but, most importantly, the substantially impaired financial condition of DeMenno-Kerdoon and its secured debt structure and, therefore, its limited ability to pay any judgment which might be rendered at the end of lengthy and complex enforcement proceedings.

The settlement calls for DeMenno-Kerdoon to pay a maximum of $3 million. DeMenno-Kerdoon is required to make minimum payments totalling $150,000, plus interest on those payments, as well as specific percentages of its adjusted net income for five consecutive fiscal years, beginning November 1, 1989, in settlement of its potential liability for violations of DOE regulations.

II. Resolution of Regulatory Issues

A. Areas of Dispute

The disputes resolved by the Consent Order include the alleged improper reporting of crude oil under the Entitlements Program of volumes of crude oil refined pursuant to a processing agreement in violation of the regulations set forth at 10 CFR 205.202, 211.66 and 211.67, addressed in a PRO issued by ERA on December 8, 1986, to DeMenno-Kerdoon and another refiner.

Also resolved is DeMenno-Kerdoon potential liability arising from various crude oil transactions during the period January 1979 through December 1980, in which ERA's audit found that the firm failed to maintain records and to report volumes of crude oil to the Entitlements Program in violation of 10 CFR 205.202, 211.66(b) and (h), 212.131. As indicated, these matters were the subjection of a PRO which was issued on December 31, 1986, and withdrawn on August 16, 1988. The proposed Consent Order would resolve the PRO, currently pending, any remaining issues related to the withdrawn PRO, and all other matters relating to DeMenno-Kerdoon's compliance with the mandatory petroleum price and allocation regulations during the period August 19, 1973, through January 27, 1981.

B. Determination of Maximum Liability

ERA calculated the maximum amount for which DeMenno-Kerdoon might be liable as a result of the violations alleged in the December 8, 1986, PRO, which is now pending before OHA, and other possible violations. ERA determined the firm's maximum potential liability with respect to the PRO by calculating the impact of DeMenno-Kerdoon's inclusion of certain volumes of crude oil in its runs to stills on its Refiners Monthly Reports (Form P102–M–1) resulting in the issuance of excess small refiner bias entitlements to DeMenno-Kerdoon. In this regard, the PRO issued to DeMenno-Kerdoon alleges that DeMenno-Kerdoon and another refiner are jointly and severally liable for excess entitlements benefits in violation of the Entitlements Program. The principal amount of the resulting alleged violations is $2,047,382.48, of which 50% is attributed by ERA to DeMenno-Kerdoon in this settlement. As adjusted, the principal amount of the violation is $1,023,691.24 plus interest. The maximum total potential liability for DeMenno-Kerdoon is approximately $4.2 million, including interest.

The proposed settlement also resolves the pending audit in which DOE found that DeMenno-Kerdoon failed to report certain volumes of controlled crude oil receipts processed at its refinery, and failed to obtain proper certification for other volumes of crude oil. The potential violation amount related to these issues is approximately $8.7 million, plus interest, for a total of approximately $22.6 million.

Thus, the total potential maximum liability of DeMenno-Kerdoon is approximately $26.8 million.

III. Determination of Reasonable Settlement Amount

ERA does not propose to settle based on the litigation risk values of the disputed issues. In determining a reasonable settlement amount for the allegations of regulatory violations discussed above, ERA reviewed several factors. The most significant factor in arriving at this proposed settlement was ERA's consideration of the current and projected economic condition of DeMenno-Kerdoon. DeMenno-Kerdoon made available to ERA extensive financial information, including financial statements, tax returns, copies of instruments of indebtedness encumbering assets, and extensive underlying documents on which the reports, returns and statements were based. As a result of this review, it became apparent to ERA that DeMenno-Kerdoon would not be capable of satisfying a judgment in an amount approaching the potential maximum liability alleged by ERA. ERA also considered that a judgment in DOE's favor, even if obtained, would be greatly in excess of DeMenno-Kerdoon's consolidated net worth, yet that judgment liability might well be subordinate to secured lenders.

Consideration of all the foregoing factors led ERA to the conclusion that this settlement is the best method for ERA to realize any recovery in this case. Based on all these considerations—the financial condition of DeMenno-Kerdoon, the time and expense required for the government to fully litigate every issue in order to obtain any recovery, and the low potential for any significant recovery with litigation success—ERA concluded that the resolution of these matters for the amounts prescribed in the proposed Consent Order is an appropriate settlement and is in the public interest.

IV. Terms and Conditions of the Consent Order.

The Consent Order provides that DeMenno-Kerdoon will pay a maximum of $3 million. DeMenno-Kerdoon will make minimum payments of not less than $150,000. An initial payment of $25,000 will be made within thirty (30) days of the effective date of the Consent Order or on January 1, 1989, whichever occurs later. Further scheduled payments totalling $125,000 will be made in thirty-five (35) equal monthly installments commencing on the first day of the next full month following the due date of the initial payment, plus interest set at 8.61% per annum.

In addition to the foregoing minimum payments, DeMenno-Kerdoon is

obligated to pay the DOE certain percentages of its adjusted net income for five consecutive fiscal years, commencing with the firm's fiscal year beginning November 1, 1989. The percentages of DeMenno-Kerdoon's adjusted net income which must be paid to the DOE on an annual basis range from 10% for adjusted net income from $.5 million to $999,999.99 to 40% for all amounts of adjusted net income including and in excess of $5 million.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: DeMenno-Kerdoon Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this notice in the **Federal Register**, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent order as a final Order, the proposed Order will be made final and effective by publication of a notice in the **Federal Register**.

Issued in Washington, DC on October 31, 1988.

Robert G. Heiss,

Deputy Chief Counsel for Operations, Economic Regulatory Administration.

[FR Doc. 88–25633 Filed 11–3–88, 8:45 am]

BILLING CODE 6450–01–M

[Docket Nos. OFU–002, 003, 004]

Order Granting Rescission of a Prohibition Order Issued to the Iowa Electric & Power Co. Pursuant to the Energy Supply and Environmental Coordination Act of 1974

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting rescission of prohibition order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) as amended by 15 U.S.C. 792(f) and implemented by 10 CFR 303.130(b), it is granting a request by the Iowa Electric Light & Power Company (the Company) to rescind the prohibition order issued on June 30, 1975, for the following powerplant:

Owner	Docket No.	Generating Station	Unit No.	Location
Iowa Electric Light and Power Company	OFU–002	Sutherland	1	Marshalltown, Iowa.
	OFU–003		2	
	OFU–004		3	

This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations. The basis for ERA's action is provided in the **SUPPLEMENTARY INFORMATION** section below.

EFFECTIVE DATE: This order shall be effective on November 4, 1988, in accordance with 10 CFR 303.10.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Department of Energy, 1000 Independence Avenue, SW., Room 3H–087, Washington, DC 20585, Telephone (202) 586–4708.

Steven J. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A–113, Washington, DC 20585, Telephone (202) 586–6947.

The public file containing a copy of this Order and other documents and supporting materials on this proceeding will be made available, upon request, at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

SUPPLEMENTARY INFORMATION: On June 2, 1975, in accordance with the ESECA, the Federal Energy Administration issued a Prohibition Order to Iowa Electric Light and Power Company prohibiting the burning of natural gas as a primary energy source in Sutherland Generating Station Units 1, 2, and 3. A subsequent Notice of Effectiveness dated January 17, 1978, and an Amended Notice of Effectiveness dated December 21, 1978, also were issued for these units.

Pursuant to 10 CFR 303.10 et seq., Iowa Electric Light and Power Company filed an Application for Rescission of Prohibiton Orders based upon what the company maintains is a substantial change in the facts or circumstances upon which the Prohibition Order was originally issued. Sutherland's Units 1 and 2 went into operation in 1955; Unit 3 was placed in service in 1961. At the time the Prohibition Order became effective, all three units were operated as base load units. Due to their size and the reduction in efficiency of the units over time, Units 1 and 2 currently are used as peaking units and Unit 3 is an intermediate unit.

All three units were designed to burn Iowa coal which has a heat content in the range of 8,500 to 9,500 Btu/lb. and a sulfur content of four to five percent. On October 14, 1987, the state of Iowa's sulfur dioxide emission regulation was changed from 8.0 lbs. of SO_2 per MMBtu of fuel burned to 5.0 lbs. SO_2per MMBtu. The company contends that while the Sutherland units were being operated as base load units, they easily adapted to burning coal with the characteristics required to meet the more stringent emissions standards. However, as peaking and intermediate units, operation with compliance coal has become more difficult, resulting in additional maintenance of the units. Additionally, Unit 3 is a cyclone unit and its physical configuration increases the difficulty of operation with the different characteristics of low sulfur coal.

Due to the changed circumstances resulting from more stringent sulfur dioxide emission regulations and the conversion of the units from base load to peaking and intermediate operation, the Company states that the future life of the units will be reduced if it must continue to operate them on low sulfur coal rather than on natural gas.

On April 8, 1988, in accordance with the procedural requirements of 10 CFR 303.134(a), the ERA published in the **Federal Register** (53 FR 11699) a Notice of Acceptance of a request by Iowa Electric Light and Power Company to rescind certain prohibition orders issued

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration (FEA) to the Department of Energy, pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

to it pursuant to the ESECA. This notice also announced the start of a 45-day public comment period. During that period interested persons also were afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed May 23, 1988. No comments were received and no hearing was requested.

Decision and Order

Accordingly, based upon information received from the Company and the entire record of this proceeding, the ERA has determined that, as a result of significantly changed circumstances with respect to the Prohibition Orders issued to Iowa Electric Light and Power Company's Sutherland Generating Units Nos. 1, 2, and 3 set forth in 10 CFR 303.136(b), this powerplant can be operated more effectively, efficiently, practically and reliably by using natural gas rather than coal as a primary energy source. Pursuant to 10 CFR 303.137(a), the ERA hereby grants the rescission request of Iowa Electric Light and Power Company and hereby orders that the Prohibition Orders on these units be rescinded.

Pursuant to 10 CFR 303.100(a) and (b), any person aggrieved by this order has not exhausted the available administrative remedies until an appeal has been filed with the DOE's Office of Hearing and Appeals and an order granting or denying the appeal has been issued. Such appeal must be filed within 30 days of the publication of this order in the **Federal Register** in accordance with the requirements of 10 CFR 303.102, 303.104 and 303.139(b).

Issued in Washington, DC on October 27, 1988.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-25634 Filed 11-3-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-632-000, et al.]

Colstrip Energy Limited Partnership, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 31, 1988.

Take notice that the following filings have been made with the Commission:

1. Colstrip Energy Limited Partnership

[Docket No. ER88-632-000]

Take notice that on September 28, 1988, Colstrip Energy Limited Partnership (Partnership) tendered for filing, pursuant to 18 CFR 35.13, the Power Purchase Agreement Consent and Assignment executed on June 30, 1988 by AEM Corp., Rosebud Energy Corp., the Partnership, the Montana Power Company and Bank of New England, N.A. This agreement relates to the assignment of all of the rights, title and interest of AEM Corp. in the Cogeneration and Small Power Production Long-Term Power Purchase Agreement to the Partnership.

Copies of the instant filing have been served upon the Montana Power Company and the Public Service Commission of the State of Montana.

Comment date: November 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER88-32-000]

Take notice that on October 26, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing an initial rate schedule consisting of a letter agreement (Agreement) with the Bonneville Power Administration (BPA) for the potential sale by PG&E to BPA of firm energy previously furnished by BPA to PG&E.

BPA will supply 1,172 GWh of energy to PG&E between September 1, 1988 and December 31, 1988. From January 1, 1989, to April 15, 1989, all or any of the energy BPA previously supplied PG&E under the Agreement can be recalled by BPA with a refund in an amount PG&E otherwise would have paid BPA, unless PG&E must burn oil to return the energy. In the latter case, PG&E will sell BPA the energy at a price based on its cost of oil.

Copies of this filing were served upon BPA and the Public Utilities Commission of the State of California.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power & Light Company

[Docket No. ER89-30-000]

Take notice that on October 26, 1988, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated July 25, 1988, between the Waushara Electric Cooperative and WPL. WPL states that this new wholesale power agreement supercedes the previous agreement between the two parties which was dated April 2, 1981, and designated Rate Schedule No. 129 by the Commission.

The purpose of this new agreement is to provide for terms of service to W-2 customers on a more similar basis to the terms of service for other wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Waushara Electric Cooperative and the Wisconsin Public Service Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER89-21-000]

Take notice that on October 24, 1988, Niagara Mohawk Power Corporation tendered for filing amendments to the Agreement between Niagara Mohawk Power Corporation and Central Hudson Gas and Electric Corporation dated October 25, 1983, and last amended by letter dated June 5, 1986, for delivery of Blenheim-Gilboa power and energy. Niagara Mohawk Power Corporation proposes the following:

1. The First sentence of Paragraph 2.1 shall be amended to read:

"Central Hudson shall pay Niagara at the rate of Thirteen Thousand, Six Hundred Twenty Seven Dollars ($13,627.00) per month for the use of Niagara's facilities made available under this agreement."

2. Pursuant to Paragraph 2.2, in the event that curtailment of service is required, Central Hudson's charges will be reduced by Nineteen Hundredths Dollars ($0.19) per megawatt of curtailment.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power Company

[Docket No. ER89-22-000]

Take notice that on October 24, 1988, Washington Water Power Company (WWP) tendered for filing a service schedule applicable to what WWP refers to as a Transmission Service Agreement between WWP, Puget Sound Power & Light Company (Puget), and the City of Spokane (Spokane). WWP states that electric power generated by Spokane at the Regional Solid Waste Disposal Project will be wheeled by WWP from the WWP/Project point of interconnection to the WWP/Bonneville Power Administration (Bonneville) point of interconnection near WWP's Westside Substation. Bonneville will in turn wheel such power from Westside to the Bonneville/Puget Kitsap point of interconnection under terms of a separate agreement.

WWP requests that the requirements of prior notice be waived and the effective date be made retroactive to the execution date, August 10, 1988.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this document.

6. Wisconsin Power & Light Company

[Docket No. ER89-29-000]

Take notice that on October 26, 1988, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated August 24, 1988, between the Adams-Columbia Electric Cooperative and WPL. WPL states that this new wholesale power agreement supercedes the previous agreements between WPL and the Adams-Marquette Electric Cooperative dated November 20, 1975, and between WPL and Columbus Electric Cooperative dated January 29, 1980, which are designated Rate Schedule No. 112 and 128, respectively, by the Commission.

The purpose of this new agreement is to reflect the merger of the two cooperatives and to provide for terms of service to W-2 customers on a more similar basis to the terms of service for other wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Adams-Columbia Electric Cooperative and the Wisconsin Public Service Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Power & Light Company

[Docket No. ER89-27-000]

Take notice that on October 26, 1988, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated August 26, 1988, between the Rock County Electric Cooperative and WPL. WPL states that this new wholesale power agreement supercedes the previous agreement between the two parties which was dated September 25, 1981, and designated Rate Schedule No. 130 by the Commission.

The purpose of this new agreement is to provide for terms of service to W-2 customers on a more similar basis to the terms of service for other wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Rock County Electric Cooperative and the Wisconsin Public Service Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Public Service Company

[Docket No. ER89-23-000]

Take notice that on October 24, 1988, Maine Public Service Company tendered for filing proposed changes in its FERC Wholesale Electric Tariff to become effective without suspension, November 1, 1988, on less than statutory notice. The proposed changes would increase revenues from jurisdictional sales and service by $370,460 based on the twelve month period ending December 31, 1987.

Maine Public Service Company filed these changes in its FERC electric tariff in order to cover a portion of its unrecovered investment in Seabrook Unit No. 1. The three Wholesale Customers have given their written consent to the proposed tariff changes prior to the submission of this filing.

Copies of this filing were served upon the public utility's three jurisdictional customers, the Maine Public Utilities Commission and the Maine Public Advocate.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER89-31-000]

Take notice that on October 26, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Central Hudson Gas & Electric Corporation (CHGE) dated July 1, 1988, providing for certain transmission services to CHGE. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 141. This new agreement is being transmitted as a supplement to the existing agreement.

The February 4, 1987 agreement provides for the addition of the new service of the transmission and delivery to CHGE of energy generated at the Nine Mile Point Unit #2 plant (Nine Mile #2) and for a change in the rate charged CHGE for the transmission and delivery to CHGE of certain power and energy generated at the Nine Mile #2 plant and at the Authority's FitzPatrick Nuclear Plant. CHGE has consented to both changes.

This supplement revised the rates from firm transmission service for deliveries from FitzPatrick and Nine mile #2 and for energy transmission service for delivery of energy by Niagara to CHGE. Niagara requests an effective date of September 1, 1988.

Copies of the filing were served upon CHGE and the New York State Public Service Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this document.

10. Wisconsin Power & Light Company)

[Docket No. ER89-28-000]

Take notice that on October 26, 1988, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated September 27, 1988, between the Central Wisconsin Electric Cooperative and WPL. WPL states that this new wholesale power agreement supersedes the previous agreement between the two parties which was dated May 31, 1983, and designated Rate Schedule No. 133 by the Commission.

The purpose of this new agreement is to provide for terms of service to W-2 customers on a more similar basis to the terms of service for other wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Central Wisconsin Electric Cooperative and the Wisconsin Public Service Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25621 Filed 11-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-2374-000, et al.]

Hugh C. MacKenzie et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 28, 1988.

Take notice that the following filings have been made with the Commission:

1. Hugh C. MacKenzie

[Docket No. ID-2374-000]

Take notice that on September 19, 1988, Hugh C. MacKenzie tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Corporation and Position

The Connecticut Light and Power Company—Vice President—Transmission and Distribution Engineering and Operations
Western Massachusetts Electric Company—Vice President—Transmission and Distribution Engineering and Operations
Holyoke Water Power Company—Vice President—Transmission and Distribution Engineering and Operations
Holyoke Power and Electric Company—Vice President—Transmission and Distribution Engineering and Operations
Northeast Utilities Service Company—Vice President—Transmission and Distribution Engineering and Operations
The Quinnehtuk Company—Vice President—Transmission and Distribution Engineering and Operations
The Rocky River Realty Company—Vice President—Transmission and Distribution Engineering and Operations
Research Park Inc.—Vice President—Transmission and Distribution Engineering and Operations

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Baltimore Gas and Electric Company

[Docket No. ES89-2-000]

Take notice that on October 20, 1988, Baltimore Gas and Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue from time to time no later than December 31, 1989 (a) not more than $425 million outstanding at any one time of short-term unsecured promissory notes and commercial paper with final maturities no later than December 31, 1990, and (b) not more than $100 million outstanding at any one time of unsecured medium-term promissory notes with final maturities no later than December 31, 1990.

Comment date: November 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ES89-4-000]

Take notice that on October 21, 1988, UtiliCorp United Inc. (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue 80,000 shares of common stock, par value $1.00 and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: November 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Fairfield Energy Venture, L.P.

[Docket No. ER89-18-000]

Take notice that on October 20, 1988, Fairfield Energy Venture, L.P. (FEV) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to 18 CFR 35.1 and 35.12, a proposed initial rate schedule applicable to sales at wholesale of electric energy and capacity to Central Maine Power Company (CMP) from a biomass wood-to-energy facility located in Fort Fairfield, Maine (Facility). This initial rate schedule is a negotiated Power Purchase Agreement Between Fairfield Energy Venture and CMP (Agreement) and has been designated FEV Rate Schedule No. 1.[1]

FEV has given notice that the Facility is a biomass-fired small power production facility with a net electric power production capacity of 30 megawatts, although the Facility's output will occasionally exceed that level. The Facility was certified by the Commission as a "qualifying facility" under Section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). *Fairfield Energy Venture,* Docket No. QF84-255-000, 28 FERC ¶ 62,031 (July 9, 1984). The Facility was recertified by the Commission as a qualifying facility on November 7, 1985. Docket No. QF84-255-001, 33 FERC ¶ 62,178 (1985). On November 27, 1985, FEV filed with the Commission a Notice of Qualification As A Small Power Production Facility in Docket Nos. QF84-255-000, *et seq.* As such, FEV states that the Facility is exempt from regulation under the Public Utility Holding Company Act and from certain state laws and regulations, but remains subject to the Commission's jurisdiction under the Federal Power Act.

FEV requests waiver of the Commission's rule requiring that rate schedules be filed not less than sixty (60) days nor more than one hundred-twenty (120) days prior to the date on which

service is to commence under an initial rate schedule. This requirement is intended to prevent the use of stale data in developing the test period for cost-of-service based rates. Section 35.3 of the Commission's regulations allows the Commission to waive the notice period in appropriate circumstances. Since the rates are formula rates based on state forecasts and the buyer's costs, and do not involve FEV's costs for a particular test period, this requirement is not applicable.

FEV also seeks waiver of the Commission's regulations regarding cost-of-service documentation. The Commission has recognized, in other cases,[2] that the cost-of-service data requirements contained in section 35.12(b)(5) of its regulations are irrelevant insofar as they would require a small power producer to substantiate its cost-of-service. FEV requests this waiver on the grounds that this information is not relevant because rates are initially based on state-forecasted rates and then on the buyer's costs, and are not dependent upon the seller's costs.

FEV seeks waiver of the Commission's regulations regarding the Uniform System of Accounts prescribed for public utilities and licensees subject to the provisions of the Federal Power Act specified by 18 CFR Parts 101 and 104. Since rates are initially based upon state-forecasted rates and then upon the buyer's costs, this information and the need for uniformity in the seller's accounting systems are unnecessary. Moreover, this requirement imposes a substantial hardship and an undue burden upon FEV as it requires more detailed counting than FEV would otherwise undertake.

FEV seeks waiver of the Commission's regulations regarding certain accounts and reports required by

[1] The original Agreement was between Fairfield Energy Venture and CMP. Under the Agreement Fairfield Energy Venture may assign its rights under the Agreement, subject to CMP's written consent. Fairfield Energy Venture, which subsequently changed its name to U.S. Energy Associates, assigned its rights under the Agreement to FEV pursuant to that certain Assignment and Assumption Agreement executed by U.S. Energy Associates, FEV, and CMP on November 27, 1985.

[2] *See, Wheelabrator Frye, Inc.,* Docket Nos. EL82-7-000 and EL82-12-000, 19 FERC ¶ 61,266 (1982).

18 CFR Parts 41, 50 and 141. FEV seeks this waiver on the basis that such information and reports are irrelevant because the rates under the contract are not to be determined by FEV's costs. Therefore, it is not necessary to protect the public in general by requiring strict compliance with these sections.

FEV also petitions the Commission to waive Commission rules that the Commission has previously determined not to be necessarily applicable to qualifying facilities such as the FEV Facility. These include regulations regarding accounting practices, reporting requirements, annual charges, dispositions of property and consolidations, securities issuances and assumptions of liability and the holding of interlocking directorate positions as they may apply to a biomass wood-to-energy facility.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25655 Filed 11-03-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1864-003, et al.]

HydroElectric Applications (Upper Peninsula Power Co. et al.); Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: New License (Over 5 MW).

b. Project No.: 1864-003.

c. Date Filed: December 24, 1987.

d. Applicant: Upper Peninsula Power Company.

e. Name of Project: Bond Falls.

f. Location: On the Ontonagon River in Ontonagon, and Gogebic Counties, Michigan, and Vilas County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. Elio Argentati, Upper Peninsula Power Company, 616 Shelden Avenue, Houghton, MI 49931, (906) 482-0220.

i. FERC Contact: Michael Dees (202) 376-9414.

j. Comment Date; December 30, 1988.

k. Description of Project: The Bond Falls Project consists of four developments:

(A) The existing Victoria Development consists of: (1) An earthfill structure (north embankment) 50 feet high and 178 feet long; (2) a reinforced concrete intake structure with a 14-foot-high concrete steel intake gate; (3) an archbuttress dam, 115 feet high and 103 feet long, consisting of four arches; (4) an ogee type concrete spillway 100 feet long, consisting of four bays each 22 feet wide equipped with 22-foot-wide and 18-foot-high steel radial gates; (5) an earth and rockfill structure (south embankment) 68 feet long and 20 feet high; (6) a 250-acre reservoir with a storage capacity of 10,500 acre-feet at a normal maximum surface elevation of 910 feet msl; (7) a 6,300-foot-long, 10-foot-diameter woodstave, steel-banded penstock; (8) a 491,300 gallons surge tank; (9) a brick veneer concrete powerhouse, 30 feet wide, 82 feet long and 50 feet high housing two 6,000-kW turbine-generator units; (10) an excavated tailrace 45 feet wide and approximately 1,300 feet long; (11) two 69-kV transmission lines; (12) a 11.5/69 kV substation; and (13) appurtenant facilities.

(B) The existing Bond Falls Development consists of: (1) An earth-filled main dam approximately 45 feet high and 900 feet long with a central concrete spillway section; (2) an earth-filled control dam approximately 35 feet high and 850 feet long; (3) three earth-filled dikes on the rim of the reservoir; (4) a storage reservoir with a water surface area of 2,160 acres, an effective storage capacity of 39,000 acre-foot, and a normal maximum surface elevation of 1,475.9 msl; (5) a trapezoidal canal 20 feet wide and 7,500 feet long; and (6) appurtenant facilities.

(C) The existing Bergland Storage Development consists of: (1) a wood and steel I beam dam approximaterly 4 feet high and 179 feet long situated between concrete retaining walls; (2) Lake Gogebic storage reservoir with a surface area of 14,080 acres, a gross storage capacity of 276,000 acre-feet, and a normal maximum surface elevation of 1,296.2 feet msl; and (3) appurtenant facilities.

(D) The existing Cisco Lakes Storage Development consists of: (1) A timber decked concrete dam 11 feet high and 21 feet long; (2) a chain of lakes with a water surface area of 4,025 acres, a storage capacity of 4,025 acre-feet, and a water surface elevation of 1,683.5 feet msl; and (3) appurtenant facilities.

The applicant estimated from historical generation that the average annual energy generation will be 72,010 MWh. The applicant is the sole owner of the existing project facilities and has no plans to modify the existing facilities or operation.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. The net investment cost for the project is $4,702.000.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

2a. Type of Application: Surrender of License.

b. Project No.: 2564-001.

c. Date Filed: September 2, 1988.

d. Applicant: Northern States Power Company.

e. Name of Project: Orienta Hydro Project.

f. Location: On the Iron River in Bayfield County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Anthony G. Schuster, Vice President, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702-0008, (715) 839-2424.

i. FERC Contact: Mary Nowak (202) 376-9634.

j. Comment Date: December 2, 1988.

k. Description of Project: The license for this project was issued on October 2, 1968, for an installed capacity of 800 kW. In September 1985, Orienta Project was damaged by a flood that will require extensive redevelopment before resuming operation. The applicant, Northern States Power Company, does not want to reinvest in the project because its facilities are remote from the project, the generation potential at the site is minimal, and the Iron River requires close operational attention because of its flood capabilities.

l. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: Joint Application for Transfer of License.

b. Project No.: 3671-000.

c. Date Filed: September 19, 1988.

d. Applicant: Borough of Central City, Pennsylvania, and Allegheny Hydro Partners, Ltd.

e. Name of Project: Allegheny Lock and Dam No. 5 Hydroelectric Project.

f. Location: On the Allegheny River in Armstrong County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. Bruce J. Wrobel, Allegheny Hydro Partners, Ltd., c/o Allegheny Hydroelectric, Inc., 885 Third Avenue, Suite 3040, New York, NY 10022, (212) 230–2100.

John L. Sachs, Esq., Olwine, Connelly, Chase, O'Donnell & Weyher, 1701 Penn. Ave., NW., Suite 1000, Washington, DC 20006, (202) 835–0500.

i. FERC Contact: Mary Nowak (202) 376–9634.

j. Comment Date: December 2, 1988.

k. Description of Project: The Borough of Central City, Pennsylvania, and Allegheny Hydro Partners, Ltd. propose to transfer the license for Allegheny Lock and Dam No. 5 Hydroelectric Project No. 3671, to Allegheny Hydro Partners, Ltd. The transfer is requested in order to facilitate the financial arrangements of the project and the Borough would like to be removed from the license.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4a. Type of Application: Surrender of License.

b. Project No.: 6588–006.

c. Date Filed: August 30, 1988.

d. Applicant: James M. Rea.

e. Name of Project: Milton Three Pond Project.

f. Location: On the Salmon River in Stafford County, New Hampshire and York County, Maine.

g. Filed Pursuant to: Federal Power Act U.S.C. 791(a)–825(r).

h. Applicant Contact: James M. Rea, Swain Road, Barrington, NH 03825, (603) 664–9318.

i. FERC Contact: Robert Bell (202) 376–9237.

j. Comment Date: December 9, 1988.

k. Description of Project: The project consists of: (1) the existing Milton Three Ponds Dam, 19 feet high and 156 feet long; (2) a reservoir having a storage capacity of 15,000 acre-feet, a surface area of 1,400 acres, and a normal pool elevation of 413.8 feet NGVD; (3) a new 7–foot–diameter steel penstock 60 feet long; (4) a new powerhouse containing 1 unit with a generating capacity of 180 kW; (5) a new trailrace; (6) a new 12.47-kV transmission line 100 feet long; and (7) appurtenant facilities.

The licensee is surrendering because the proposed project is no longer feasible for it. No construction has taken place at this site.

l. This notice also consists of the following standard paragraphs: B, C and D2.

5a. Type of Application: Surrender of License.

b. Project No.: 7048–011.

c. Date Filed: August 26, 1988.

d. Applicant: The Metropolitan District.

e. Name of Project: Collinsville Project.

f. Location: On the Farmington River in Hartford County, Connecticut.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Lawrence J. Golden, Byrne, Slater, Sandler, Shulman and Rouse, 330 Maine Street, P.O. Box 3216, Hartford, CT 06103, (203) 525–4700.

i. FERC Contact: Robert Bell (202) 376–9237.

j. Comment Date: December 9, 1988.

k. Description of Project: The project consists of the following two developments;

The Upper Collins Dam Development consists of: (1) An existing 325-foot-long and 18-foot-high stone masonry dam with a spillway crest elevation of 286.2 feet NGVD; (2) new 3-foot-high flashboards; (3) a small reservoir with a surface area of 55 acres; (4) an existing 200-foot-long canal at the westside of the dam; (5) a new powerhouse with 2 turbine-generator units with a total installed capacity of 1,500 kW; (6) an existing tailrace; (7) a new 23-kV and 100-foot-long transmission line; (8) new fish ladders; and (9) other appurtenances.

The Lower Collins Dam Development consists of: (1) An existing 350-foot-long and 20-foot-high concrete gravity dam with a spillway crest elevation of 264.7 feet NGVD; (2) new 5-foot-high flashboards; (3) a small reservoir with a surface area of 32 acres; (4) an existing 650-foot-long canal at the east side of the dam; (5) a new powerhouse with 2 turbine-generator units with a total installed capacity of 1,500 kW; (6) an existing tailrace; (7) a new 23-kV and 100-foot-long transmission line; (8) new fish ladders; and (9) other appurtenances.

The licensee is surrendering because the proposed project is no longer feasible for it. No construction has taken place at this site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6a. Type of Application: Surrender of Exemption.

b. Project No.: 7257–002.

c. Date Filed: July 22, 1988.

d. Applicant: David B. DuBrul.

e. Name of Project: Lane Shops.

f. Location: North Branch of the Winooski River, Washington County, Vermont.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. David B. DuBrul, 500 Pine Street, 1B, Burlington, VT 05401, (802) 658–3800.

i. FERC Contact: Mary Nowak—(202) 376–9634.

j. Comment Date: December 2, 1988.

k. Description of Project: The project, as exempted, consisted of: (1) A concrete-encased timber crib dam which is 13 feet high, 100 feet long, and has a crest elevation of 524.6 feet above mean sea level; (2) a reservoir with a surface area of 5 acres and a storage capacity of 20 acre-feet; (3) a powerhouse containing 2 generating units having a total installed capacity of 200 kilowatts; and (4) appurtenant facilities. The existing dam is owned by David and Louise DuBrul. The average annual generation was 185,000 kilowatthours. The exemptee has stopped generating and dismantled the project.

l. This notice also consists of the following standard paragraphs: B and C.

7a. Type of Application: Surrender of License.

b. Project No.: 9387–004.

c. Date Filed: August 29, 1988.

d. Applicant: Tultex Corporation.

e. Name of Project: Avalon Dam Hydropower Project.

f. Location: On the Mayo River in Rockingham County, North Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. Applicant Contract: Mr. Willard Harris, Tultex Corporation, P.O. Box 5191, Martinsville, VA 24115, (703) 632–2961.

i. FERC Contract: Mary Nowak (202) 376–9634.

j. Comment Date: December 9, 1988.

k. Description of Project: The license for this project was issued on February 27, 1987, for an installed capacity of 780 kW. The licensee states that it has determined that the project would be economically infeasible as a result of decreased energy rates. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B and C.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 10653–000.

c. Dated Filed: August 29, 1988.

d. Applicant: Jerome A. Olson.

e. Name of Project: Nashua River Project.

f. Location: Nashua River in Middlessex and Worcester Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act 17 U.S.C. 791 (a)–825 (r).

h. Applicant Contract: Mr. Jerome A. Olson, 168 Rea Street, Lowell, MA 01852, (508) 453–7951.

i. FERC Contract: Steven H. Rossi (202) 376–9814.

j. Comment Date: December 23, 1988.

k. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 100-foot-long concrete gravity dam; (2) a reservoir with a surface area of 0.7 acre, no usable storage capacity, and a normal water surface elevation of 215 feet m.s.l.; (3) an existing 30-foot-wide concrete intake structure; (4) an existing powerhouse containing two new generating units with a capacity of 250 kW each for a total installed capacity of 500 kW; (5) and existing 50-foot-wide, 400-foot-long concerete tailrace; (6) a new transmission line, 300 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 2,500,000 kWh. The existing dam is owned by John Horgan, Ayer, Massachusetts. The applicant estimates that the cost of the studies under permit would be $25,000.

l. Purpose of Project: Project power would be sold to the Littleton Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10668–000.

c. Dated Filed: August 25, 1988.

d. Applicant: Barbara K. Londergan.

e. Name of Project: Vulcan Hydro Project.

f. Location: On the Fox River near Appleton, Outagamie County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Barbara K. Londergan, 1206 Shipley Road, Wilmington, DE 19803, (302) 762–2967.

i. FERC Contact: Ed Lee, (202) 376–5786.

j. Comment Date: December 23, 1988.

k. Description of Project: The proposed run-of-river project would utilize the existing U.S. Army Corps of Engineers' Upper Dam and Reservoir, and would consist of: (1) An existing 600-foot-long and 50-foot-wide power canal; (2) the Vulcan powerhouse housing six generating units for a total installed capacity of 1,800 kW; (3) a 450-foot-long tailrace; (4) a short transmission line; and (5) appurtenant facilities. The applicant estimates the average annual generation would be 9 GWh. The existing project annual generation would be 9 GWh. The existing project site is owned by Wisconsin Electric Power Company, 231 West Michigan, Milwaukee, Wisconsin 53201. The cost of the work to be performed under the permit by the applicant would be $1,000.

l. Purpose of Project: The applicant anticipates that the power generated will be sold to a local utility company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application, or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intevene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the

National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 1, 1988, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25624 Filed 11–3–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3472–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 17, 1988 through October 21, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–DOE–A84029–00, Rating EO2

Superconducting Super Collider Construction and Operation, Site Selection, Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee and Texas.

Summary

EPA's objections are not to the Superconducting Super Collider (SSC) itself, but to the potential for unmitigated impacts, primarily air and wetland, associated with several of the proposed sites. EPA believes that choice of sites should consider the potential and cost for mitigation of these impacts. Detailed mitigation of these impacts should be described in the final EIS and any site-specific supplemental EIS.

ERP No. D–DOE–K06005–CA, Rating EC2

Lawrence Livermore National Laboratory, Nonactive, Mixed and Radioactive Waste Decontamination and Waste Treatment Facility, Construction and Operation, Implementation, Alameda County, CA.

Summary

EPA expressed environmental concerns because this document did not discuss existing ground water contamination in the Lawrence Livermore National Laboratory vicinity, or how the various waste treatment/decontamination alternatives will affect DOE's compliance with its monitoring and remediation obligations under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (Superfund).

ERP No. D–FHW–D40237–VA, Rating EO2

George P. Coleman Bridge Traffic Congestion Alleviation, York River Crossing Study, Section 10 and 404 Permits, Coast Guard Permits and Funding, York and Gloucester Counties, VA.

Summary

EPA expressed objections in alternatives 1 and 5 due to potential impacts to wetlands, farmland, parkland/open space and historic areas, as well as impacts resulting from secondary development. In addition, alternative 14B has potential impacts to subaqueous beds and a hazardous waste facility. Alternative 12A poses the least threat to the environment. EPA requested additional information be included in the final EIS.

Final EISs

ERP No. F–BLM–G40120–NM

Socorro Resource Area Management Plan, Implementation, Las Cruces District, Socorro and Catron Counties, NM.

Summary

ERP has no objections to the action as proposed.

ERP No. F–FHW–040119–NJ

US 206 (Section 5) Improvement, CR–518 to Routes US 202, NJ–28 and US 206 Intersection/Somerville Circle, Implementation, Funding and 404 Permit, Somerset County, NJ.

Summary

EPA requests further information concerning mitigation of the stream channelization impacts. In addition, EPA stated it will evaluate the detailed wetlands mitigation plan during the Section 404 permit process.

ERP No. F–NPS–L61096–AK

Cape Krusenstern National Monument, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary

Review of this document has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F–SCS–H36101–IA

Soap Creek Watershed Protection and Flood Reduction Plan, Funding and Implementation, Des Moines River, Appanoose, Davis, Monroe and Wapello Counties, IA.

Summary

EPA has no objections to the project as proposed.

Regulations

ERP No. R–AFS–A65157–00

36 CFR Part 222; Grazing and Livestock Use on the National Forest System, (53 FR 30954).

Summary

EPA is concerned that the environmental protection and rehabilitation of range and pasture land are insufficiently addressed. As proposed, the regulation concentrates on rangeland improvements of particular benefit to livestock grazing and management with too little emphasis on environmental benefits. EPA believes that such benefits, for example, to

riparian areas and water quality, should be encouraged by the regulation.

Dated: November 1, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-25640 Filed 11-3-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3471-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed October 24, 1988 Through October 28, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880354, DSuppl, AFS, WA, Wenatchee National Forest, Land and Resource Management Plan, Additional Information and Management Requirements Analysis, Implementation, Kittitas, Chelan and Yakima Counties, WA, Due: January 26, 1989, Contact: Glenn Hoffman (509) 662-4311

EIS No. 880355, FSuppl, COE, ID, WA, Lower Granite Project, Lower Granite Interim Navigation and Flood Protection Dredging, Implementation, Snake and Clearwater Rivers, Nez Perce County, ID and Asotin, Garfield and Whitman Counties, WA, Due: December 5, 1988, Contact: Robert Palmer (509) 522-6927

EIS No. 880356, Draft, AFS, WV, VA, Appalachian Integrated Pest Management (AIPM) Gypsy Moth Demonstration Project, Implementation, WV and VA, Due: December 19, 1988, Contact: David P. Smith (404) 347-4338

EIS No. 880358, Draft, COE, CA, Dry Creek (Roseville), Northern California Streams Study, Flood Control Plan, Implementation, Sacramento County, CA, Due: December 21, 1988, Contract: Richard Meredith (916) 551-1855

EIS No. 880360, Final, BLM, CA, California Section 202 Wilderness Study Areas (WSAs) Wilderness Recommendations, South Warner Contiguous and Carson Iceberg WSAs, Wilderness Designation Recommendation, Modoc County, CA and Alpine County, NV, Due: December 5, 1988, Contact: C. Rex Cleary (916) 257-5381

EIS No. 880361, Final, BLM, CA, California Section 202 Wilderness Study Areas (WSAs) Wilderness Recommendation, Garcia Mountain, Rockhouse, Domeland, Machesna, Yolla Bolly and Big Butte WSAs, Nonwilderness Designation Recommendations, San Obispo, Tulare, Kern, Tehama, Mendocino, and Trinity Cos., CA, Due: December 5, 1988, Contact: Robert D. Rheiner Jr. (805) 961-4406

EIS No. 880362, Final, AFS, AK, Quartz Hill Molybdenum Project Mine Development, Construction, Operation and Post-Mining Abandonment Section 10 and 404 Permits, Special Use Permit and Leases, Misty Fiords National Monument, Tongass National Forest, AK, Due: December 5, 1988, Contact: J. Michael Lunn (907) 225-3103

EIS No. 880363, Final, FHW, GA, GA-371/I-85 Funding, 404 Permit and USCG Permit, Forsyth and Gwinnett Counties, GA, Due: December 5, 1988, Contact: Louis M. Papet (404) 347-4751

EIS No. 880364, Final, NAS, PRO, Galileo Mission Project, Jovian System Investigation Program and Ulysses Mission Project, Heliosphere Exploration Program, Modifications and Implementation, Due: December 5, 1988, Contact: Dudley G. McConnell (202) 453-1587.

EIS No. 880365, Final, BLM, OR, Brothers/LaPine Planning Area, Resource Management Plan, Implementation, Prineville District, Crook, Deschutes, Harney, Klamath and Lake Counties, OR, Due: December 5, 1988, Contact: Brian Cunninghame (503) 447-4115.

Amended Notices

EIS No. 880305, Final, EPA, FL, MXG, Gulf of Mexico Ocean Dredged Material Disposal Site (ODMDS) Designation for Fine Grained Dredged Material from the Pensacola Navy Homeport Project and Other Future Projects, FL, Due: November 14, 1988, Contact: Reginald Rogers (404) 347-2126. Published FR 9-23-88—Review period extended.

EIS No. 880312, Draft, AFS, CA, Mono Basin National Forest Scenic Area, Comprehensive Management Plan, Implementation, Inyo National Forest, Mono County, CA, Due: January 19, 1989, Contact: John Ruopp (619) 873-5814. Published FR 9-30-88—Review period extended

EIS No. 880347, Draft, COE, CA, Los Angeles Raiders Football Stadium, Parking and Associated Facilities Development, Land Use Change and Implementation, Santa Fe Dam Flood Control Basin and Recreation Area, City of Irwindale, Los Angeles County, CA, Due: December 12, 1988, Contact: Rick Grover (213) 894-7962

Published FR 10-21-88—Review period reestablished. The 45 day NEPA review period is calculated from 10-28-88.

Dated: November 1, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-25639 Filed 11-3-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3471-5]

Science Advisory Board Environmental Engineering Committee, Products of Incomplete Combustion Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Science Advisory Board's Products of Incomplete Combustion Subcommittee (PICS) will meet December 15-16, 1988 in the St. James Hotel, Board Room, 950 24th Street, NW., Washington, DC. The meeting will begin at 9:00 a.m. on Thursday and Friday, and adjourn no later than 5:00 p.m. The purpose of the meeting is to review the Agency's proposed controls for emissions of Products of Incomplete Combustion (PICs) for hazardous waste incineration.

The meeting is open to the public. Any member of the public wishing further information on the meeting, or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, Science Advisory Board (A101-F) U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by December 9, 1988. Seating at the meeting will be on first come basis.

Date: October 28, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-25579 Filed 11-3-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3471-6]

Science Advisory Board Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Science Advisory Board's Environmental Engineering Committee (EEC) will meet December 1-2, 1988 in the Waterside Mall, EPA South Conference Room number 2, 401 M Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. on Thursday and Friday, and adjourn no later than 5:00 p.m.

The purpose of the meeting is to examine topics of interest to the Environmental Engineering Committee that are likely to be reviewed in Fiscal Year 1989. These topics include, but are not limited to the following subjects, ash

resulting from the combustion of municipal waste, treatability of toxic materials, a position paper on the use of computer modeling in environmental assessment, a report to Congress on hazardous waste discharge, surface impoundment models, and review of the Agency's research on asbestos. Other topics will be discussed as time permits, such as sludge management, Toxicity Characteristic Leaching Procedure (TCLP), risk reduction strategies, municipal solid waste problems, and engineering responsibilities and controls in the area of global climate change and ozone.

The meeting is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, Science Advisory Board, (A101-F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by November 25, 1988. Seating at the meeting will be on a first come basis.

Date: October 28, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-25580 Filed 11-3-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

1989 Maximum Reimbursement Fee for an Amateur Operator License Examination

October 31, 1988.

The FCC announced today that effective January 1, 1989, the maximum allowable reimbursement fee for an amateur operator license examination will be $4.75. This amount is based upon a 4.2% increase in the Department of Labor Consumer Price Index between September 1987 and September 1988.

Volunteer examiners (VEs) and volunteer-examiner coordinators (VECs) may charge examinees for out-of-pocket expenses incurred in preparing, processing or administering examinations for Technician, General, Advanced and Amateur Extra Class operator licenses. The amount of any such reimbursement fee from any examinee for any one examination session, regardless of the number of elements administered, must not exceed the maximum allowable fee. Where the VEs and the VEC both desire reimbursement, they jointly decide upon a fair distribution of the fee.

No fee is allowed for the Novice Class operator license examination.

This announcement is made pursuant to § 97.36 of the Commission's Rules, 47 CFR 97.36.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-25599 Filed 11-3-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1756]

Petitions for Reconsideration and Applications for Review of Actions in Rule Making Proceedings

November 1, 1988.

Petitions for reconsideration and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC., or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3600). Oppositions to these petitions and applications must be filed [Insert date of 16 days after FR Pub date.] See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 2 of the Commission's Rules Regarding the Allocation of the 216-225 MHz Band. (Gen Docket No. 87-14, RM's 4829, 4831 & 4938)

Number of petitions received: Approximately Five Hundred and Fifty.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Oildale, California) (MM Docket No. 87-332, RM-5751)

Number of petitions received: 1.

Applications for Review Filed

Subject: Petition to Amend § 97.61(a) of the Commission's Rules to Permit Emission J3E in the 30 Meter Amateur Band. (RM-6363)

Number of petitions received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-25598 Filed 11-3-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection.

Title: Maintenance and Services equipment inventory and schedule for maintenance, repair and replacement of equipment purchased with Federal funding assistance.

Abstract: State and local government applicants for Federal funding assistance for maintenance, repair and replacement of emergency equipment (purchased with Federal funding assistance), must provide an inventory and schedule for equipment to be included in their funding request. This will provide source data for determining budget estimates for the Maintenance and Services Program.

Type of Respondents: State or local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 300.

Number of Respondents: 150.

Estimated Average Burden Hours per Response: 2 hours.

Frequency of Response: Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: October 28, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-25566 Filed 11-3-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010636–051.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line, B.V.
Orient Overseas Container Line (UK) Ltd.
Hapag-Lloyd AG
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification would clarify resigning members' obligations concerning service contracts. The parties have requested a shortened period of review.

Agreement No.: 213–010837–001.

Title: U.S. Pacific Coast/Europe Space Charter and Sailing Agreement by and among Compagnie Generale Maritime, Hapag-Lloyd Aktiengesellschaft and Intercontinental Transport (ICT) B.V.

Parties:

Compagnie General Maritime
Hapag-Lloyd Aktiengesellschaft
Incotrans B.V.

Synopsis: The proposed amendment would incorporate the provisions of another agreement between the parties (Agreement No. 217–010649) into the present agreement. As a result of the incorporation the Agreement's name would be changed to "North American Pacific Coast/Europe Space Charter and Sailing Agreement by and among Compagnie Generale Maritime, Hapag-Lloyd Aktiengesellschaft, and Incotrans, B.V." and the scope of the present agreement would also be expanded to include movements to and from the Pacific Coast of Canada. Modifications would also be made to agreement provisions regarding the number, size, and type of vessels to be operated by the parties as well as a number of administrative-type provisions related to the operation of the Agreement.

Agreement No.: 203–011075–009.

Title: Central America Discussion Agreement.

Parties:

Association Party
United States/Central America Liner Association
Independent Carrier Parties
Nordana Line, Inc.
Tropical Shipping and Construction Co. Ltd.
Maritima Juno, S.A.
Nexos Line
Thompson Shipping Co., Ltd.
Gran Golfo Express
Concorde Shipping Inc.
Norwegian American Enterprises, Inc.
Marine Bulk Carriers, Inc.

Synopsis: The proposed modification would add Central Gulf Lines, and delete Marine Bulk Carriers, Inc., as parties to the agreement. It would also authorize the individual carrier members of the Association to meet and exchange information with the Independent Carrier Parties, and would permit the appointment of administrative officials and the sharing of expenses.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 1, 1988.

[FR Doc. 88–25597 Filed 11–3–88; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2341.
Name: Leonard Bros. International, Ltd.
Address: 7060 West Fort St., Detroit, MI 48209.
Date Revoked: October 12, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 1098.
Name: Traffic Dispatch International, Inc.
Address: 31 South Calvert Street, Baltimore, MD 21202.
Date Revoked: October 15, 1988.
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88–25513 Filed 11–3–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

October 28, 1988

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340).

Final approval under OMB delegated authority of the extension, with revision, of the following

Report title: Commercial Bank Report of Consumer.

Agency form number: FR 2571.

OMB Docket number: 7100–0080.

Frequency: Monthly.

Reporters: Commercial banks.

Annual reporting hours: 2880.

Number of Respondents: 400.

Average Hours per Response: 0.6.

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 225a and 248(a)(2)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report collects information monthly from a sample of 400 commercial banks on consumer installment credit. On the September report only, respondents provide information on total noninstallment credit. The major proposed revision adds a new section to the report form requesting monthly information on the amounts outstanding of consumer

installment credit that have been sold without recourse and included in packages of asset-backed securities.

Final approval under OMB delegated authority of the extension, without revision, of the following reports

1. Report title: Quarterly Gasoline Company Report.
Agency form number: FR 2580.
OMB Docket number: 7100–0009.
Frequency: Quarterly.
Reporters: Gasoline companies.
Annual reporting hours: 7.
Estimated average hours per response: 0.15.
Number of respondents: 11
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 263, 461 and 353 *et seq.*] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report collects information on the amount outstanding of retail credit card accounts at gasoline companies. These data are included in the installment credit component of total consumer credit which is used by the Federal Reserve in general financial analysis for monetary policy purposes.

2. Report title: Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans.
Agency form number: FR 2835.
OMB Docket number: 7100–0085.
Frequency: Quarterly.
Reporters: Commercial banks.
Annual reporting hours: 175.
Estimated average hours per response: 0.25.
Number of respondents: 175
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)] and is given confidential treatment.

This report collects interest rate information quarterly on selected consumer installment loans from a sample of 175 member banks. This information helps the Federal Reserve to assess interest rate developments and is used in general financial analysis for monetary policy purposes.

Board of Governors of the Federal Reserve System, October 28, 1988.
William W. Wiles,
Secretary of the Board.

[FR Doc. 88-25528 Filed 11-3-88; 8:45 am]
BILLING CODE 6210-01-M

[Docket No. R-0651]

Fee Schedules for Federal Reserve Bank Priced Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Approval of a Private Sector Adjustment Factor and fee schedules for Federal Reserve Bank priced services for 1989.

SUMMARY: The Board has approved a Private Sector Adjustment Factor ("PSAF") for 1989 of $69.7 million. This represents a decrease of $6.5 million, or 8.5 percent, from the 1988 target of $76.2 million. The PSAF is a recovery of imputed costs that takes into account the taxes that would have been paid and the return on capital that would have been provided had the Federal Reserve's priced services been furnished by a private business firm. The Board has also approved 1989 fee schedules for the automated clearing house, wire transfer of funds, net settlement, definitive safekeeping, noncash collection, book-entry, and check payor bank services offered by the Federal Reserve System. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires fees for Federal Reserve priced services to be established on the basis of all direct and indirect costs, including the PSAF.

EFFECTIVE DATE: The Private Sector Adjustment Factor and fee schedules are effective January 1, 1989, except for the elimination of night cycle surcharges for ACH return items which will be effective April 10, 1989.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Private Sector Adjustment Factor: Paul Bettge, Program Leader (202/452–3174), Division of Federal Reserve Bank Operations; for questions regarding fee schedules: Christine G. Slater, Senior Analyst, Electronic Payments (202/452–2539), Lisa Kerner, Analyst, Securities (202/452–3437), or Nalini Rogers, Analyst, Check Payments (202/452–3801), Division of Federal Reserve Bank Operations; for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

Copies of the 1989 fee schedules for ACH, wire transfer of funds, net settlement, definitive safekeeping, noncash collection, book-entry securities, and check payor bank services are available from local Federal Reserve Banks.

SUPPLEMENTARY INFORMATION:

Private Sector Adjustment Factor ("PSAF")

The Monetary Control Act of 1980 requires that fee schedules for the Federal Reserve's priced services include an allocation of imputed costs for taxes that would be paid and the return on capital that would be provided had the services been furnished by a private business firm. Using the methodology previously approved by the Board, these imputed costs are based on data developed in part from a model comprised of the nation's 25 largest bank holding companies.

Briefly stated, the methodology first entails determining the value of Federal Reserve assets that will be used directly in producing priced services during the coming year, including the net effect of assets planned to be acquired or disposed of during the year. Short-term assets are assumed to be financed by short-term liabilities; long-term assets are assumed to be financed by a combination of long-term debt and equity.

Imputed capital costs are determined by applying related interest rates and rate of return on equity derived from the bank holding company model to the assumed debt and equity values. These costs, together with imputations for estimated sales taxes, FDIC insurance assessment on clearing balances held with the Federal Reserve to settle transactions, and expenses of the Board of Governors related to priced services, comprise the PSAF.

Details regarding the derivation of the PSAF are as follows:

Asset Base

The estimated value of Federal Reserve assets used in providing priced services in 1989 is reflected in Table 1. Table 2 shows that the value of assets assumed to be financed through debt and equity are projected to total $445.2 million in 1989, an increase of $28.0 million or 6.7 percent from 1988. This increase results largely from capital expenditures for bank premises, furniture, and equipment planned by the Reserve Banks next year.

Cost of Capital and Taxes

Last year the Board approved imputing the cost of equity capital for the PSAF using an average of rates of return on equity derived from the model in each of the last three years in order to reduce the variability of imputed return on equity caused by fluctuations in bank holding company earnings. As a result of abnormally low 1987 bank holding company earnings, however, the Board is using a five-year average of bank holding company data for the 1989 PSAF. Use of three-year average data for the 1989 PSAF would result in a PSAF that is significantly lower than the proposed PSAF. A System Task Force is also revisiting the PSAF methodology to attempt to address the variability and level of the PSAF over the long-term.

The Task Force proposes to present its recommendations to the Board early next year so that public comment may be requested on a new methodology, if necessary, and final Board action may be taken in time for inclusion in the 1990 price-setting process.

Table 3 shows the interest, equity, and tax rates for 1989 and compares them with the rates used for developing the PSAF for 1988. The sample of 25 bank holding companies used to calculate the rates for 1989 differs slightly from the sample used for the 1988 PSAF in that two bank holding companies replaced others because of changes in relative asset size. One large bank holding company was again removed from the sample because of unique government oversight over bank management decisions during the past few years, and the twenty-sixth largest bank holding company was substituted. The bank holding companies with the highest and lowest rates of return on equity before taxes were also excluded, consistent with the approved methodology for determining the PSAF. Calculations were then based on the remaining 23 bank holding companies.

Other Imputed Costs

As shown in Table 3, other required PSAF recoveries for 1989 for sales taxes, FDIC insurance, and Board expenses total $11.4 million, down $0.4 million from 1988. The reduction is due to lower imputed sales taxes, because of a decline in projected capital expenditures for 1989 from 1988. The decline is also attributable to a reduction in Board staff working directly on the development of priced services, as the Board is anticipating that staff will spend more time on regulatory matters in 1989 as a result of Regulation CC and the Expedited Funds Availability Act.

1989 Fee Schedules

The Monetary Control Act requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs incurred in providing the priced services, including the PSAF. The Board's pricing principles state that fees will be set so that the revenues for major service categories match costs, including the PSAF. The Board may set fees for a service line that do not fully recover costs, in the interest of providing an adequate level of services nationwide. The fees for each service line, however, must recover all operating costs, float costs, and certain imputed costs of providing that service, as well as contribute to the pre-tax return on equity. Total revenue for all Federal Reserve services must, in the aggregate, recover all costs, including the PSAF.

Last year the Board approved fees for priced services that were set to recover 101.8 percent of the cost of providing such services in 1988, including the PSAF and the cost of float. Through the first eight months of 1988, the System recovered 100.8 percent of total costs. The Board estimates that toal costs for 1988, including the PSAF, will be $660.7 million. Total revenue is estimated to be $664.0 million, resulting in a 100.5 percent recovery rate.

In 1989, the total costs of priced services, including the PSAF, are estimated to be $684.9 million. Total revenue is estimated to be $707.8 million, resulting in a 103.4 percent recovery rate. The Board believes that the 1989 recovery rate may be optimistic because costs for check services may be higher than anticipated as a result of the impact of Expedited Funds Availability Act and Regulation CC on Reserve Bank operations. The majority of the 1989 fees that are being proposed are the same as those currently in effect. Since 1984, as the table below shows, the System has made substantial progress in moving closer to its target of a 100 percent recovery.

TOTAL PRICED FINANCIAL SERVICES

[Dollars in millions]

	Total cost	Total revenue	Recovery rate (percent)
1984	$519.1	$559.8	107.8
1985	571.2	603.8	105.7
1986	599.3	627.7	104.7
1987	627.3	649.7	103.5
1988 Est.	660.7	664.0	100.5

The Board has approved expenditures for special research and development efforts for 1988 which could have a major beneficial effect on the payments mechanism. While the magnitude of expenditures may fluctuate significantly from year to year, expenses for these one-time special projects are considered a temporary cost to priced services. Projects are currently underway to improve the reliability of electronic payment services as well as to explore the application of digital image technology to the check service. Special projects associated with the automated clearing house, funds transfer, book-entry, and check services will cost an estimated $2.3 million in 1988 and $4.3 million in 1989. The proposed fees for 1989 are based on total costs, including the PSAF, but excluding special project costs.

The following is a discussion of the estimated 1988 and 1989 financial performance, and 1989 fee schedules for the individual priced services.

Automated Clearing House ("ACH")

The table below shows the Federal Reserve Banks' estimated 1988 and projected 1989 financial performance for the ACH service.

AUTOMATED CLEARING HOUSE

[Dollars in millions]

	Total cost	Total revenue	Recovery rate (percent)
1988	$42.2	$41.9	99.2
1989	46.9	47.1	100.5

The total costs in the table do not include special project costs, which would reduce the 1988 and 1989 recovery rates to 99.1 percent and 99.2 percent respectively. The Board estimates that total commercial costs, including the PSAF, will increase 11.1 percent in 1989, while commercial ACH volume will increase nearly 24 percent. These cost and volume estimates reflect continuing economies of scale in ACH processing.

The Board believes the 1989 volume projection for ACH may be conservative, as actual volume growth has generally exceeded budgeted volumes. For example, through the first eight months of 1988, ACH volume has grown at more than 29 percent, compared to a 24 percent budgeted volume growth rate.

The Board has lowered the surcharges for processing night cycle transactions in 1989 to reflect reductions in float costs and continued improvements in the efficiency of night ACH operations. These improvements would allow the night cycle surcharge on debit transactions to be reduced from 4.5 cents to 3.5 cents, and the night cycle surcharge for next-day credit transactions to be reduced from 2.0 cents to 1.5 cents.

To recover the costs associated with providing labor-intensive services more fully, the Board has increased the nonautomated ACH fees. As these prices continue to reflect the increased cost of providing these labor-intensive services and as additional institutions convert from paper to electronics, the fixed cost base for these nonautomated services will be borne by fewer institutions, resulting in higher prices. Conversely, prices for automated services are expected to decrease in future years as volume grows and the

number of Federal Reserve ACH processing sites is reduced.

The Board has approved two additional price changes. First, beginning in 1989, the Treasury has required that government Notifications of Change ("NOCs") be submitted in automated form. Institutions may either automate the NOCs or deposit paper NOCs with Reserve Banks for conversion to electronic form. The Board has approved a fee of $1.00 for each paper NOC deposited.

Second, the Board has eliminated the night cycle surcharges for return items, effective April 10, 1989, because little float cost is associated with processing return items and because of continuing improvements in the efficiency of night operations.

Funds Transfer and Net Settlement

The Federal Reserve Banks project financial performance in the funds transfer and net settlement service for 1988 and 1989 as shown below.

FUNDS TRANSFER AND NET SETTLEMENT

[Dollars in millions]

	Total cost	Total revenue	Recovery rate (percent)
1988	$70.0	$68.2	97.5
1989	74.0	75.3	101.8

The total costs in the table do not include special project costs, which would reduce the 1988 and 1989 recovery rates to 97.3 percent and 100.2 percent respectively. In 1989, the Board estimates that funds transfer costs, including the PSAF, will increase by $4.0 million or about 5.7 percent over 1988. The volume for basic funds transfers originated is expected to increase by four percent in 1989. With the new fee changes discussed below, the projected recovery rate for 1989 is 101.8 percent.

For 1989, the Board has increased the basic funds transfer fee by three cents and returned to its 1987 level of $0.50.[1] The Board anticipates that as Reserve Banks continue to take action to improve contingency and availability of funds transfer operations, similar increases may be necessary in the next one to two years to fund these initiatives.

For net settlement and wire transfer telephone advices, the Board has increased the fee from $3.50 to $4.00, placing the fee on a similar level to that charged for ACH telephone advices.

The Board has approved adjustments to the 1989 fees for electronic connections. The System has conducted an extensive review of the pricing structure and fees for electronic connections and, as part of that study, determined that the current fee structure should be retained; however, fees should be adjusted to recover more accurately the full costs of providing electronic access to depository institutions. The Board has increased the fee for dial connections from $60 to $65 per month, increased the milti-drop leased line fee from $250 to $300 per month, and increased the dedicated leased line fee from $400 to $600 per month.

Definitive Safekeeping and Noncash Collection

The table below shows the estimated 1988 and 1989 financial performance, based on Federal Reserve Bank projections for the definitive safekeeping and noncash collection service.

	Definitive safekeeping and noncash collection		
	($ millions)		Recovery rate (percent)
	Total cost	Total revenue	
1988	$18.8	$18.3	97.3
1989	17.8	17.7	99.2

Definitive safekeeping and noncash collection costs are expected to decrease by 5.4 percent in 1989 as Reserve Banks continue to manage the anticipated declines in volume. Total revenue is expected to decrease 3.6 percent, even with the proposed price increases. Volume declines are expected to continue as remaining bearer securities mature or are called.

In definitive safekeeping, volumes are expected to decline about 13.7 percent in 1989. The Board has approved price increases for six districts to offset volume declines. The Board has increased the current fees by $2.00 to $5.00 for deposits and withdrawals; by $0.25 to $1.00 for receipts/issues maintained; by $1.00 to $10.00 for purchases and sales and reregistrations; and up to $0.001 per month per $1,000 par value maintained.

At the request of the Federal Reserve Bank of Richmond, the Board approved formations of nominee name partnerships so that the Bank may hold registered securities on behalf of institutions in a nominee name. The nominee name permits the Reserve Bank to conduct transactions and collect interest on these securities, as instructed by the depositor, more quickly and without the cumbersome legal documentation necessary for transactions of securities registered in the depositor's or the depositor's customer's name. A similar service is currently offered in some other districts, but their costs are being recovered through the monthly definitive safekeeping account maintenance fee. The Richmond Bank has identified a need for this enhancement in the Fifth District, but finds it necessary to charge an explicit fee for its nominee name component. The Board has approved a change of $2.85 per interest collection transaction for nominee name securities; this fee is the same as the fee that will be charged by Richmond in 1989 to process the payments for coupons clipped from vault securities and forwarded for in-district collection.

For the noncash collection service, the Board has approved price increases for eight districts to offset an anticipated 7.7 percent volume decline. The increases to current fees range from $0.10 to $1.00 per envelope for collection of coupons, and from $2.00 to $9.00 for return item and bond collections.

Book-Entry

The Federal Reserve Banks estimate 1988 and 1989 financial performance in the book-entry securities [2] service as shown below.

	Book-entry		
	($ millions)		Recovery rate (percent)
	Total cost	Total revenue	
1988	$9.1	$8.8	96.6
1989	9.7	9.9	102.5

The total costs in the table do not include special project costs, which would reduce the 1988 and 1989 recovery rates to 96.2 percent and 99.1 percent respectively. For 1989, the Board made no changes to the existing prices, except for a fee to be assessed to receivers of reversals. Reversals of book-entry transfer transactions would be priced on a per-item basis, to distribute costs more equitably among users of the service. The Board has approved a reversal fee because the receiver of a reversal originated the initial securities transfer which

[1] The basic funds transfer fee is assessed to both the originator and receiver of the funds transfer. Currently, both originator and receiver pay $0.47 for a funds transfer. Each will pay $0.03 more under the revised fee schedule.

[2] The financial performance reflects only book-entry transfers of government agency securities, excluding Treasury securities but including securities of international organizations that are held in book-entry form at Federal Reserve Banks.

prompted the reversal. Reversals account for approximately five percent of securities transfer volume and the per-item fee will provide approximately six percent in additional transfer revenue.

Volume is projected to increase 8.3 percent, resulting in a 12.7 percent gross revenue growth in 1989. Costs are projected to increase about 6.2 percent.

The Federal Reserve Banks, as fiscal agents of the Treasury, also process transfers of Treasrury securities for depository institutions. These transactions, which are identical to those for federal agency issues, are subject to a fee assessed by the Treasury. At the Treasury's request, the methodology utilized to determine the detailed costs of these two components of the book-entry service was reviewed and modified, resulting in a projected increase in costs to the Treasury for 1989 of 6.6 percent. Because the Reserve Banks must also provide settlement for these transfers, a funds settlement fee of $0.75 is charged for each transfer. This service, which is ancillary to the Treasury securities transfer, is treated as a non-priced service. As a result of the cost reallocation, the Board has reduced the funds settlement fee associated with Treasury securities transfers by $0.15 to $0.60.

Commercial Check

On June 16, 1988, the Board approved fee and deadline schedules for check collection and returned check services, effective September 1, 1988, through December 31, 1989. The Board revised check prices at that time in response to the new returned check services that were implemented by Federal Reserve Banks on September 1 to facilitate bank compliance with the requirements of the Expedited Funds Availability Act and Regulation CC. Under the revised fee schedules, returned check services were priced explicitly for the first time; previously, the costs of providing return services were incorporated in the Federal Reserve's forward collection fees. Check collection and return fees will be reviewed in the spring of 1989, and the Board will make price adjustments to be effective in mid-1989, if warranted.

Comparison of the estimated cost recovery performance for 1988 and the projected cost recovery performance for 1989 are shown in the table below for the commercial check service. The total costs in the table do not include special project costs, which would reduce the 1988 and 1989 recovery rates to 100.8 percent and 103.6 percent respectively.

	Commercial check ($ millions)		Recovery rate (percent)
	Total cost	Total revenue	
1988	$506.5	$512.4	101.2
1989	522.1	543.1	104.0

The check payor bank fee schedules were not included in the package of check services prices that was approved by the Board in June 1988 because payor bank services were not directly affected by the September implementation of the Expedited Funds Availability Act. The Board has approved fee schedules which would bring all districts into compliance with the standard System price structure for payor bank services. In addition to the price structure changes, the new fee schedule also reflects the expansion of new services either within an office or to other offices within a district, as well as a few adjustments to existing payor bank service prices.

Cash

Financial performance for the cash service is shown in the table below.

	Cash ($ millions)		Recovery rate (percent)
	Total cost	Total revenue	
1988	$14.1	$14.4	102.0
1989	14.5	14.7	101.7

Total costs for cash services are expected to increase by $341 thousand or 2.4 percent in 1989[3] Changes in prices for cash services are approved under delegated authority.

By order of the Board of Governors of the Federal Reserve System, October 28, 1988.

William W. Wiles,

Secretary of the Board.

TABLE 1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—average for year]

	1989	1988
Short-term assets:		
Imputed reserve requirement on clearing balances	$283.3	$268.2
Investment in marketable securities	2,077.9	1,967.0
Receivables [1]	29.6	28.0
Materials and supplies [1]	7.1	6.4
Prepaid expenses [1]	6.2	5.8
Net items in process of collection (float)	432.8	438.3
Total short-term assets	2,836.8	2,713.7
Long-term assets:		
Premises [1, 2]	259.9	245.4
Furniture and equipment [1]	137.9	129.5
Capital leases	1.1	2.5
Leasehold improvements [1]	4.7	2.2
Total long-term assets	403.6	379.6
Total assets	3,240.3	3,093.3
Short-term liabilities:		
Clearing balances	2,361.2	2,235.2
Balances arising from early credit of uncollected items	432.8	438.3
Short-term debt	42.8	40.1
Total short-term liabilities	2,836.8	2,713.6
Long-term liabilities:		
Obligations under capital leases	1.1	2.5
Long-term debt [3]	156.8	136.3
Total long-term liabilities	158.0	138.9
Total liabilities	2,994.7	2,852.5
Equity [3]	245.6	240.7
Total liabilities and equity	3,240.3	3,093.2

[1] Financed through PSAF; other assets are self-financing.

[2] Includes allocations in Board of Governors' assets to priced services of $0.4 million for 1989 and $0.5 million for 1988.

[3] Imputed figures; represent the source of financing for certain priced services assets.

Note.—Details may not add to totals due to rounding.

TABLE 2—DERIVATION OF THE 1989 PSAF

[Millions of Dollars]

A. Assets to be Financed [1]:	
Short-term	$42.8
Long-term [2]	402.4
	$445.2

[2] The major cash services being priced are cash transportation and coin wrapping, nonstandard packaging of currency orders and deposits, and nonstandard frequency of access to cash services.

TABLE 2—DERIVATION OF THE 1989 PSAF—Continued

[Millions of Dollars]

B. Weighted Average Cost:		
1. Capital Structure [3]:		
Short-term Debt	9.6%	
Long-term Debt	35.2%	
Equity	55.2%	
2. Financing Rates/Costs [3] Average rates paid by the bank holding companies included in the sample:		
Short-term Debt	6.6%	
Long-term Debt	9.0%	
Pre-tax Equity [4]	16.9%	
3. Elements of Capital Costs:		
Short-term Debt	$42.8	X6.6%=$ 2.8
Long-term Debt	156.8	X9.0%= 14.0
Equity	245.8	X16.9%= 41.4
		$58.3
C. Other Required PSAF Recoveries:		
Sales Taxes	$8.0	
Federal Deposit Insurance Assessment	1.9	
Board of Governors Expenses	1.4	
	$11.4	
D. Total PSAF Recoveries	$69.7	
As a percent of capital	15.7%	
As a percent of expenses [5]	13.6%	

[1] Priced service asset base is based on direct determination of assets method.
[2] Consists of total long-term assets less capital leases that are self-financing.
[3] All short-term assets are assumed to be financed by short-term debt. Of the total long-term assets, 39 percent are assumed to be financed by long-term debt and 61 percent by equity.
[4] The pre-tax rate of return on equity is based on average after-tax rates of return on equity for the bank holding company sample, adjusted by the effective tax rate to yield the pre-tax rate of return on equity. The 1989 figure for after-tax equity and the tax rate are based upon a five-year average of these rates.
[5] Systemwide 1989 budgeted priced service expenses less shipping were $512.4 million.

TABLE 3—CHANGES BETWEEN 1989 AND 1988 PSAF COMPONENTS

	1989	1988
A. Assets to be Financed (millions of dollars):		
Short-term	$42.8	$40.1
Long-term	402.4	377.1
B. Cost of Capital:		
Short-term Debt Rate	6.6%	7.1%
Long-term Debt Rate	9.0%	9.7%
Pre-tax Return on Equity [1]	16.9%	20.1%
Weighted Average Cost of Capital	13.8%	15.4%
C. Tax Rate [1]	20.5%	32.3%
D. Capital Structure:		
Short-term Debt	9.6%	9.6%
Long-term Debt	35.2%	32.7%
Equity	55.2%	57.7%
E. Other Required PSAF Recoveries (millions of dollars):		
Sales Taxes	$8.0	$8.2
Federal Deposit Insurance Assessment	1.9	1.9
Board of Governors Expenses	1.4	1.7
F. Total PSAF Required Recovery	$69.7	$76.2
As Percent of Capital	15.7%	18.3%
As Percent of Expenses	13.8%	16.3%

[1] The 1989 figures for pre-tax equity and the tax rate are based on a five-year average of these rates:

	1983	1984	1985	1986	1987	Average
Pre-tax equity rate	23.4%	20.7%	21.1%	24.0%	−5.0%	16.9%
Tax rate	33.8%	36.5%	30.8%	39.0%	−38.0%	20.5%

[FR Doc. 88-25620 Filed 11-3-88; 8:45 am]
BILLING CODE 6210-01-M

Advance Banc Shares, Inc., Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board

of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 25, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Advance Banc Shares, Inc., Fairfield, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Wayne County Bank and Trust Company, Fairfield, Illinois.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25522 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

BankAmerica Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a writte presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1988.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. BankAmerica Corporation, San Francisco, California; to engage *de novo* through its subsidiary, BA Futures, Incorporated, San Francisco, California, in providing futures commission merchant services to affiliates and non-affiliates with respect to certain futures contracts and options on futures contracts covering stock indexes and municipal bond indexes in the same manner as provided in § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25523 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 17, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. The Baughman Tile Co., Inc., Paulding, Ohio; to acquire an additional 0.44 percent of the voting shares of Oakwood Deposit Bank, Oakwood, Ohio.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Donald and Frances Parks, North Little Rock, Arkansas, to acquire an additional 17.73 percent of the voting shares of National Banking Corporation, North Little Rock, Arkansas, and thereby indirectly acquire National Bank of Arkansas in North Little Rock, North Little Rock, Arkansas. Donald and Frances Parks will then form a voting trust which will control at least 60.04 percent of the outstanding shares of National Banking Corporation. Stephen F. Smith, Maumelle, Arkansas, and Bobby John Osborne, Sherwood, Arkansas, acting with Donald and Frances Parks will become trustees for the voting trust.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John W. Coots, Platte City, Missouri, to acquire an additional 8.57 percent of the voting shares of Wells Bancshares, Inc., Platte City, Missouri, and thereby indirectly acquire Wells Bank of Platte City, Platte City, Missouri.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25524 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Proposed Acquisition of a State Savings and Loan Association

Citicorp, New York New York, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) for Citicorp Mortgage, Inc., a wholly-owned subsidiary of Citicorp, to acquire all of the voting shares of Glen Ellyn Savings and Loan Association, Glen Ellyn, Illinois.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as general matter, a proper incident to banking under section 4(c)(8) of the BHC Act. *See e.g. Citicorp*, 72 Federal Reserve Bulletin 724 (1986). The Board, however, has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public

benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, descreased or unfair competition, conflicts of interests, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

Accordingly, comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2223, Eccles Building, 20th Street and Constitution Avenue NW., Washington, DC 20551, not later than 5:00 p.m. on Monday, November 14, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, October 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25527 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

Mercantile Bankshares Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the office of the Board of Governors not later than November 25, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Mercantile Bankshares Corporation, Baltimore, Maryland; to acquire Benchmark Appraisal Group, Inc., Columbia, Maryland, and thereby engage through its existing subsidiary, Mercantile Mortgage Corporation and New Appraisal Company, an organizing subsidiary of the former, that would hold the assets acquired in real estate property appraisal activities pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25525 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

St. Mary Holding Co.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.32(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.12(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. St. Mary Holding Corporation, Franklin, Louisiana; to engage *de novo* in the business of leasing personal property, including, but not limited to, office equipment, computers, copies and communications equipment pursuant to § 225.25(b)(5) of the Board's Regulation Y. This activity will be conducted throughout the State of Louisiana.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25526 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

West Suburban Bancorp, Inc., Lombard, IL; Proposed Acquisition of a Federal Savings Bank

West Suburban Bancorp, Inc., Lombard, Illinois ("West Suburban"), has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire all of the to-be-issued voting

shares of Regency Savings Bank, F.S.B., Naperville, Illinois ("Regency"), after its conversion from a mutual to stock form of organization on a voluntary supervisory basis pursuant to regulations of the Federal Home Loan Bank Board.

In connection with this application, West Suburban also proposes to acquire two service corporation subsidiaries of Regency and one second tier subsidiary, which engage in real estate investment and development; invest in collateralized mortgage obligations; conduct general insurance activities; and offer mutual funds and other securities on behalf of a third part securities broker-dealer. West Suburban has requested a four year period to terminate any impermissible activities.

The Board previously has determined by order that the operation of a thrift institution is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the BHC Act. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). The Board, however, has approved several proposals involving the acqusition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

The Board has been requested to act expeditiously upon this application in order to recapitalize and revitalize the thrift institution. Comments regarding this application must be submitted in writing and must be received at the offices of the Board of Governors not later than 5:00 P.M. on November 23, 1988. The application is available for immediate inspection at the office of the Board of Governors.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25529 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under Office of Management and Budget Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the office of Management and Budget (OMB) to approve a new information collection, General Services Administration Acquisition Regulation Part 516.2, Fixed Price Contracts.

Addresses: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW, Washington, DC 20405.

Annual Reporting Burden: 2914 respondents submit 4371 responses per year (1.5 responses per respondent); each response requires .5 hours. The total reporting burden is 2186 hours per year.

Purpose: This information is used to support adjustments in Multiple Award Schedule (MAS) contract prices. MAS contractors are required to furnish certain pricing information when MAS price increases are requested.

For Further Information Contact: Edward J. McAndrew, (202) 566-1224.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: October 20, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-25609 Filed 11-3-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 7, 1988.

Family Support Administration

(Call Reports Clearance Office on 202-252-5605 for copies of package)

1. FY 1989 Winter Grantee Survey of the Low Income Home Energy Assistance Program (LIHEAP)—0970-0063—This survey obtains estimates of sources and uses of federal and non-federal funds, and households to be assisted in 1989. Data tables are then developed and sent as an informational memorandum to Congress, states and other interested parties. Respondents: State or local governments; Number of Respondents: 51; Average burden per response: 2.5; Frequency of Response: 51; Estimated Annual Burden: 127,500 hours.

2. Monthly "Flash" Report of Selected Program Data—0970-0071—The information is used to monitor program trends and serves as advance indicators of program activity and costs. The affected public is comprised of State and local agencies administering AFDC programs. Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: 648; Average burden per response: 2; Estimated Annual Burden: 1,296 hours.

OMB Desk Officer: Justin Kopca

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Federal Annual Magnetic Tape Reporting—0960-0307—The information collected by these forms is used by SSA to determine if an employer's annual wage reporting system can create a tape that is compatible and can be read by SSA's system. Respondents: State or local governments, Businesses or other for-profit. Number of Respondents: 4,000; Frequency of Response: On occasion; Average burden per response: 12 minutes; Estimated Annual Burden: 800 hours.

OMB Desk Officer: Justin Kopca

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Investigational Device Exemption (IDE) Reports and Records—0910-0078—The IDE regulations establish conditions and procedures under which investigations of medical devices involving human subjects may be exempt from certain requirements of the Federal Food, Drug and Cosmetic Act. The exemption permits the investigational use of medical devices to determine their safety and effectiveness.

FDA list the IDE submissions of information collection as indicated below. Respondents: Businesses or other for-profit, Small businesses or organizations.

Total Annual Burden: 45,600.

1st Information Collection

Title: *Original IDE Submission—Reporting*
Number of Respondents—250
Frequency of Response—1
Average Burden per Responses—56

2nd Information Collection

Title: *IDE Supplement Submissions—Reporting*
Number of Responsdents—600
Frequency of Responses—6
Average Burden per Responses—6

3rd Information Collection

Title: *Original IDE Submissions—Record-keeping*
Number of Responsdents—25
Frequency of Responses—1
Average Burden per Responsedents—12

4th Information Collection

Title: *IDE Supplements Submissions—Record-keeping*
Number of Responsdents—3,600
Frequency of Responses—1
Average Burden per Responses—1

5th Information Collection

Title: *Non-significant Investigations—Recordkeeping*
Number of Responsdents—600
Frequency of Response—1
Average Burden per Response—5

2. The National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners—0915–0126—Bank data identifying incompetent, unprofessional, and unethical physicians and health practitioners will be shared with licensing boards, professional societies, and selected health care providers. These data will be used to maintain and improve health care and will be obtained from insurers, licensure boards, peer review committees, hospitals and other providers. The clearance request has been submitted with ten separate information collection itemized burdens. Each collection is listed below and on the following page. Respondents: Individuals and households, State or local governments, Businesses or other for-profit.

1st Information Collection

Title: *Correction of Errors and Omissions—Section 60.6(a)*
Number of Respondents—625
Number of Responses per Respondent—1–10
Average Burden per Response—15 minutes

2nd Information Collection

Title: *Revisions to Report Actions—Section 60.6(b)*
Number of Respondents—6,800
Number of Responses per Respondent—1–4
Average Burden per Response—15 minutes

3rd Information Collection

Title: *Reporting Medical Malpractice Payments—Section 60.7(b)*
Number of Respondents—200
Number of Responses per Respondent—100–600
Average Burden per Response—25 minutes

4th Information Collection

Title: *Licensure Actions by Boards of Medical Examiners—Section 60.8(b)*
Number of Respondents—125
Number of Responses per Respondent—50–150
Average Burden per Response—25 minutes

5th Information Collection

Title: *Adverse Actions on Clinical Privileges—Section 60.9(a)(1)*
Number of Respondents—10,000
Number of Responses per Respondent—1–3
Average Burden per Response—25 minutes

6th Information Collection

Title: *Reporting by Boards to the National Data Base—Section 60.9(b)*
Number of Respondents—54
Number of Responses per Respondent—150–350
Average Burden per Response—5 minutes

7th Information Collection

Title: *Hearings for Health Care Entities Found in Noncompliance—Section 60.9(c)*
Number of Respondents—15
Number of Responses per Respondent—1
Average Burden per Response—480 minutes

8th Information Collection

Title: *Hospital Requests for Information on Applicants—Section 60.10(a)(1)*
Number of Respondents—7,500
Number of Responses per Respondent—5–30
Average Burden per Response—10 minutes

9th Information Collection

Title: *Hospital Requests for Information on Current Staff—Sect. 60.10(a)(2)*
Annual:
Number of Respondents—3,750
Number of Responses per Respondent—1
Average Burden per Response—120 minutes

10th Information Collection

Title: *Procedure for Filing a Dispute—Data Base—Section 60.14(b)*
Annual:
Number of Respondents—1,200
Number of Responses per Respondent—1
Average Burden per Response—30 minutes
Total Annual Burden: 81,997

3. Estimating the Frequency of HIV Exposures Among Emergency Care Providers—NEW—Emergency Care providers are known to be exposed to large volumes of blood. In addition, the populations who receive emergency care are known in some areas to have a particularly high volume of HIV infection. The types of exposures, the precautions and the circumstances will be observed and recorded through an interview in order to determine the risk of infection among emergency care providers. The HIV seroprevalence among the patients receiving care will be determined in a blinded manner. Respondents: Individuals or households; Number of Respondents: 2,500; Number of Responses per Respondent: 2.35; Average Burden Per Response: .136; Estimated Annual Burden: 798.

OMB Desk Officer: Shannah Koss-McCallum

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238 for copies of package)

1. Evaluation of Social/Health Maintenance Organization (S/HMO) Demonstration—0938–0450—The Social/Health Maintenance Organization Demonstration and evaluation has been Congressionally mandated. The primary data collection will permit HCFA to measure the effects of the S/HMO alternative, and S/HMO on Medicare beneficiaries' health status, beneficiaries' satisfaction with the S/HMO alternative, and S/HMO marketing effectiveness. The S/HMO as an evolving organization will also be studied. Respondents: Individual or households; Number of Respondents: 2991; Frequency of Response: 1; Average burden response: 1 hour; Estimated Annual Burden: 2991 hours.

OMB Desk Officer: Allison Herron

Office of the Secretary

(Call Reports Clearance Officer on 202–245–6511 for copies of package)

1. Withdrawn Clearance Request—"On September 30, 1988, the Department of Health and Human Services published a notice soliciting public

comment on a proposed information collection, submitted to OMB for approval by the Office of the Secretary, entitled "Physician Ownership of, and Compensation from, Health Care Providers to Whom they Make Patient Referrals." On October 18, 1988, the Department officially withdrew this request for OMB approval. We are hereby making public notification that this request for OMB approval has been withdrawn, and the companion notice soliciting public comments is retracted."

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

Dated: October 31, 1988

James E. Larson,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88-25567 Filed 11-3-88; 8:45 am]

BILLING CODE 4110-60-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 14, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301–9650–4149 for copies of package)

1. Application for Supplemental Security Income—0960–0229—The information collected by this form is used by the Social Security Administration to determine eligibility and amount of benefits payable in claims for supplemental security income (SSI) payments. Respondents: Individuals or households; Number of Respondents: 1,200,000; Frequency of Response: one time; Average burden per response: 34 minutes; Estimated Annual Burden: 680,000 hours.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. International Drug Scheduling; Convention on Psychotropic Substances: Non-barbiturate Sedatives. Voluntary Submission of Data and Comments on the Abuse Potential, Actual Abuse, Illicit Trafficking, and Medical Utility of Twenty-five Drugs of the Non-barbiturate Sedative Class that are Candidates for International Control—NEW—Information collected will be used in compiling an information package to be sent to the World Health Organization. Collection is required by 21 U.S.C. 811 (d)(2)(A), (d)(2)(B) and a treaty. The affected public consists of drug manufacturers and others who wish to comment on the licit and illicit use of these twenty-five drugs. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, and Small businesses or organizations; Number of Respondents: 10; Number of Responses per Respondent: 2; Average Burden Per Response: 30; Estimated Annual Burden: 600 hours.

2. Regulation—Mine Safety and Health Administration 30 CFR Respiratory Protective Devices—0920–0109—Part II prescribes requirement and procedures which must be met in filing applications for joint approval by MSHA and NIOSH of respirators and modifications of respirators. Application contents, quality control plans and quality control records are required (30 CFR 11.11, 11.35, 11.41, and 11.43). Respondents: Businesses or other for-profit; Number of Respondents: 37; Frequency of Response: 13; Average burden per response: 99.23; Estimated Annual Burden: 47,729.

3. Small Business Innovation Research Grant Applications for Phase I and II—0925–0195—The purpose of the Small Business Innovation Research Phase I and II applications is to provide a vehicle by which small businesses can apply for available research funds. This is a request to have the page limitation increased to 30 pages so that the Phase I Final Report may be increased to a recommended 10 pages. Respondents: Small businesses or organizations; Number of Respondents: 2,850; Number of responses per Respondent: 1 Average Burden Per Responses: 13.10; Estimated Annual Burden: 37,350 hours.

4. Color Additive Certification—0910–0216—The information collected is required by FDA for the purpose of responding to request for color certification as required in section 706 of the Food, Drug and Cosmetic Act and the regulations promulgated in 21 CFR Part 80. The activity includes analysis of a representative sample to insure compliance with applicable specifications and issuance of a certificate with an assigned certification lot number. Respondents are any persons requesting certification of a manufactured batch of color additive. The clearance requests reflects information collected in two areas Reporting/Recordkeeping. Respondents: Businesses or other for-profit, Small businesses or organizations.

	Reporting	Record-keeping
Number of response	35	35
Frequency of responses	125	N/A
Average burden	0.25	[1] 31.2
Total annual burden	2,184	

[1] (Hours per respondent.)

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: October 27, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88-25424 Filed 11-3-88; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 88F-0322]

Nippon Gohsei (U.S.A.) Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nippon Gohsei (U.S.A.) Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a polyester resin prepared from terephthalic acid, isophthalic acid, succinic anhydride, ethylene glycol, diethylene glycol, and 2,2-dimethyl-1-1,3-propanediol as a component of polymeric coatings intended to contact alcoholic foods.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HHF-355), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4017) has been filed by Nippon Gohsei (U.S.A.) Co., Ltd., 747 Third Ave., New York, NY 10017, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of a polyester resin prepared from terephthalic acid, isophthalic acid, succinic anhydride, ethylene glycol, diethylene glycol, and 2,2-dimethyl-1-1,3-propanediol as a component of polymeric coatings intended to contact alcoholic foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 27, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–25543 Filed 11–3–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0097]

Revised Chapter in Regulatory Procedures Manual; Perishable Foods, Including Fresh Fish and Seafood and Fresh Produce; Delayed Effective Date

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is postponing the effective date of revised Regulatory Prodedures Manual Chapter 9–73, "Perishable Foods, Including Fresh Fish and Seafood and Fresh Produce." A notice announcing the availability of this chapter, which provides FDA districts with guidance for uniform handling of sampled import shipments of these products, was published in the **Federal Register** of July 29, 1988 (53 FR 28699). This chapter was to have been effective September 27, 1988. However, because of concerns about the impact of these revised procedures, the agency has decided to delay the effective date of this chapter until further notice.

FOR FURTHER INFORMATION CONTACT: James C. Lyda, Office of Regulatory Affairs (HFC–131), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 1301–443–6553.

SUPPLEMENTARY INFORMATION: Under revised Regulatory Procedures Manual Chapter 9–73, importers would maintain control over all imported perishable food products that FDA has sampled, and that are not believed to violate the Federal Food, Drug, and Cosmetic Act, until at least 5 p.m. local time on the day following FDA sample collection, unless released earlier by the agency. Agreements by importers to retrieve sampled lots that are distributed and later found violative by FDA would no longer be required, because redelivery bonds would remain in force until FDA's analyses are completed and sampled lots are formally released. However, because of concerns about the impact of these revised procedures, the agency has decided to delay the effective date of this chapter until further notice.

Dated: November 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25582 Filed 11–3–88; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

National Toxicology Program; Announcement of Completed Short-Term Toxicology Studies on Six Chemicals; Request for Comments

As part of an effort to inform the public and allow interested parties to comment and provide information on chemicals prior to designing studies for long-term toxicology and carcinogenesis studies, the National Toxicology Program (NTP) will routinely announce in the **Federal Register** the list of chemicals for which short-term toxicology studies have been completed.

Short-term toxicology studies on the chemicals listed in this announcement have been completed and the National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is in the process of evaluating the results. A decision on whether additional studies are needed, including long-term toxicology and carcinogenicity studies, will soon be made by the NTP. If you have relevant information (such as current production, use pattern, exposure levels, toxicological data) to share with the NTP on any of these chemicals, please contact the responsible NTP Scientist within 30 days of the appearance of this announcement. Contact may be made by telephone or mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The information provided will be considered by the NTP in determining which chemicals require additional studies and in designing these studies.

Formic Acid (64–18–6)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Kamal Abdo, telephone 919–541–7819.

2-Mercaptobenzimidazole (583–39–1)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Kamal Abdo, telephone 919–541–7819.

Diethanolamine (111–42–2)—14-day and 90-day skin paint studies and 14-day and 90-day dosed water studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Ron Melnick, telephone 919–541–4142.

1,6-Hexanediamine (6055–52–3)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. John French, telephone 919–541–7790.

2-Hydroxy-4-methoxybenzophenone (131–57–7)—14-day and 90-day dosed feed studies and 14-day and 90-day skin paint studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. John French, telephone 919–541–7790.

Sodium xylenesulfonate (1300–72–7)—14-day and 90-day skin paint studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Richard Irwin, telephone 919–541–3340.

Please submit all comments and suggestions on chemical(s) by telephone or by mail to the responsible scientist (listed above) within 30 days of publication of this notice. Any submissions received after the above date will be accepted and utilized if possible.

Dated: October 28, 1988.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 88–25581 Filed 11–3–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[FES 88-48; (CA-930-09-4332-13)]

Availability of Final Environmental Impact Statement: California Section 202 Wilderness Study Areas, Bakersfield District and Ukiah District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement (EIS) for California section 202 Wilderness Proposals—Garcia Mountain, Rockhouse, Domeland, Machesna, Yolla Bolly and Big Butte WSAs.

SUMMARY: This EIS assesses the consequences of managing six section 202 Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed include: (1) A "no wilderness/no action" alternative for each WSA and (2) an "all wilderness" alternative for each WSA.

The names of the six section 202 WSAs analyzed, their total acreage and the proposed action for each are as follows:

Garcia Mountain WSA—494 acres; nonsuitable
Rockhouse WSA—130 acres; nonsuitable
Domeland WSA—2,209 acres; nonsuitable
Machesna WSA—80 acres; nonsuitable
Yolla Bolly WSA—640 acres; nonsuitable
Big Butte WSA—2,391 acres; nonsuitable

These WSA have been studied in accordance with the general land use planning provisions of section 202 of the Federal Land Policy and Management Act (FLPMA) and policies that provide for wilderness consideration of areas of less than 5,000 acres if they are adjacent to lands with wilderness potential administered by other Federal agencies. For section 202 WSAs not recommended suitable for wilderness designation, the State Director has the authority under FLPMA to release those public lands from wilderness study and retun them to multiple use management in accordance with existing land use plans.

There is a 30-day public review period for the Final EIS. A draft Record of Decision can then be filed for a 60-day Governor's review, after which the Record of Decision is completed. Multiple use management may begin 30 days after the State Director signs the Record of Decision.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the District Managers, Bakersfield District, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, California and Ukiah District, 555 Leslie Street, Ukiah, California 95482-5599. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20240

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT:

District Manager, Bureau of Land Management, Bakersfield District, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301

or

District Manager, Bureau of Land Management, Ukiah District, 555 Leslie Street, Ukiah, CA 95482-55999.

Date: October 3, 1988.

Ed Hastey,

State Director.

[FR Doc. 88-25564 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-40-M

[FES 88-47; (CA-930-09-4332-13)]

Availability of Final Environmental Impact Statement: California Section 202 Wilderness Study Areas, Susanville District, CA, and Carson City District, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement (EIS) for California section 202 Study Areas Wilderness Proposals—South Warner Contiguous WSA and Carson Iceberg WSA.

SUMMARY: This EIS assesses the consequences of managing two section 202 Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) a "partial wilderness" alternative for one of the WSAs

The WSAs addressed in this EIS are the South Warner Contiguous WSA and the Carson Iceberg WSA. The South Warner Contiguous WSA encompasses a total of 4,500 acres of which 1,187 acres of the WSA are recommended suitable for wilderness designation. The Carson Iceberg WSA totals 550 acres and the entire WSA is recommended suitable for wilderness designation.

These WSAs have been studied in accordance with the general land use planning provisions of section 202 of the Federal Land Policy and Management Act (FLPMA) and policies that provide for wilderness consideration of areas less than 5,000 acres if they are adjacent to lands with wilderness potential administered by other Federal agencies. The Bureau of Land Management wilderness proposals for suitable section 202 WSAs will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the District Managers, Susanville District, 805 Hall Street, Susanville, California 96130 and Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20240

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825

or

Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, NV 89520.

FOR FURTHER INFORMATION CONTACT:

District Manager, Bureau of Land Management, Susanville District, 805 Hall Street, Susanville, CA 96130.

District Manager, Bureau of Land Management, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701.

Date: October 27, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-25565 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-40-M

[WY-040-09-4332-09]

Environmental Statements; Availability, etc.: Rock Springs District, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a revised Draft Environmental Impact Statement (DEIS) for Wilderness Study Areas (WSAs) in the Rock Springs District, Wyoming.

SUMMARY: The Revised Draft EIS analyzes the wilderness suitability recommendations for 13 WSAs in the Rock Springs District in southwestern Wyoming. These WSAs cover 219,380 acres. The Proposed Action recommends 105,347 acres in 5 WSAs as suitable for designation as wilderness.

DATES: Written comments will be accepted on the Revised Draft EIS until 90 days after the Environmental Protection Agency publishes their receipt of filing of this DEIS in the Federal Register. Two public hearings will be held to accept oral and written comments for the record. The first hearing will be held on January 4, 1989, in Rock Springs, Wyoming, at 7 p.m. at Western Wyoming College, Room 1302. The second hearing will be held on January 5, 1989, in Lander, Wyoming, at 7 p.m. at the Lander Valley High School multipurpose room. Testimony will be limited to 10 minutes with written submission invited at the hearing.

Participants may register prior to the hearing by submitting such requests in writing to the address below. Participants may also register at the registration desk prior to the start of the hearing.

ADDRESSES: Written comments on the document should be addressed to Wilderness EIS Team Leader, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming, 82902–1869.

FOR FURTHER INFORMATION CONTACT: Alan Stein, Team Leader, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming, 82902–1869, phone (307) 382–5350.

SUPPLEMENTARY INFORMATION: A draft EIS on the 13 WSAs was originally published in 1983. Public comments on that original draft EIS were analyzed and revisions made to prepare a final EIS. In the interim, oil and gas leases issued prior to passage of the Federal Land Policy and Management Act of 1976 (FLPMA) expired. No new leases were issued. When the original draft EIS was issued, most of the WSAs were almost totally leased for oil and gas. This affected the potential impacts if the WSA were designated for wilderness because the oil and gas lease was a valid existing right which would allow for oil and gas activities to occur even under wilderness designation.

The change in impacts affected the analysis to the point where some wilderness suitability recommendations were changed. The expiration of oil and gas leases, the changes in wilderness suitability recommendations, and the length of time between the original Draft EIS and now resulted in the decision to issue a Revised Draft EIS and to circulate it for public comment.

Hillary A. Oden,

State Director, Wyoming.

October 31, 1988.

[FR Doc. 88–25595 Filed 11–3–88; 8:45 am]

BILLING CODE 4310-22-M

[MT-930-09-4322-02]

Meeting Notice for Miles City District Grazing Advisory Board, Butte District Grazing Advisory Board, and Lewistown District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that the three Montana District Grazing Advisory Boards will meet December 1, 1988. The meeting will begin at 1:30 p.m. at the Northern Hotel in Billings, Montana. This will be a joint meeting with the Grazing Advisory Boards of the Miles City, Lewistown, and Butte Districts. The agenda includes discussion of a drought policy for livestock grazing, the State Director's Guidance on Access, and prescribed burn policy.

The meeting is open to the public. The public may make oral statements before the boards or file written statements for their consideration. Summary minutes of the meeting will be maintained in each Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following that meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301; or District Manager, Lewistown District, Bureau of Land Management, 80 Airport Road, Lewistown, Montana 59457; or District Manager, Butte District, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702.

Ray Brubaker,

Acting State Director.

October 21, 1988.

[FR Doc. 88–25603 Filed 11–3–88; 8:45 am]

BILLING CODE 4310-DN-M

[Alaska AA-48579-AD]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48579–AD has been received covering the following lands:

Copper River Meridian, Alaska

T. 8 S., R. 1 W.,
Sec. 7, S½SW¼.

(78 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from May 1, 1988, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48579–AD as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1988, subject to the terms and conditions cited above.

Dated: October 24, 1988.

Sue A. Faught,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 88–25561 Filed 11–3–88; 8:45 am]

BILLING CODE 4310-JA-M

[ID-030-08-4212-13]

Realty Action (I–25616); Private Exchange Involving Public Lands in Madison County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Private Exchange Involving Public Lands in Madison County, Idaho.

The surface estate of the following described public land has been found suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1716):

Boise Meridian, Idaho

T. 6 N., R. 38 E.
Sec. 14, S½SW¼NE¼, N½NW¼SE¼.

The area described contains 40 acres, more or less.

The above described public lands will be segregated from entry under the public land laws and the mining laws, except the mineral leasing laws, effective upon publication of this notice in the Federal Register. The segregative effect will terminate upon issuance of patent to the State of Idaho or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

In exchange for these lands the United States will acquire the surface estate of the following described lands in Jefferson County, Idaho from Keith Meyers and Sons:

Boise Meridian, Idaho

T. 7 N., R. 38 E.
Sec. 16, NE¼NW¼.

The area described contains 40 acres, more or less.

The exchange proponent does not own the mineral estate of this land.

BLM proposes to exchange public land in Madison County, Idaho for private land in Jefferson County, Idaho located within or adjacent to several areas of special designation. This exchange is consistent with BLM and local planning for the lands involved. The public interest will be well served by completing the exchange.

The value of the lands to be exchanged is equal.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1980, (26 Stat. 391; 43 U.S.C. 945).

2. All mineral deposits in the subject lands so patented pursuant to the Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1719), and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning the exchange, including the environmental assessment is available for review at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Idaho Falls District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: October 28, 1988.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88-25562 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-66-M

[AZ-020-09-4212-13; AZA-23085-B]

Realty Action; Exchange of Public Lands, Maricopa, Cochise and Yavapai Counties, AZ

The following described federal lands have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Base and Meridian, Maricopa County, Arizona

T. 6 N., Range 2 West,
Section 4, lots 1 to 4, incl., S½N½, S½;
Section 5, lots 1 to 4, incl., S½N½;
Section 6, lots 1 to 5, incl., N½SE¼NE¼, SW¼SE¼NE¼, SW¼NE¼, SE¼NW¼;
Section 9, all;
Section 18, E½SW¼, W½SE½.

Total acres 2,067.19.

In exchange for the above described public lands, the United States will acquire all or part of the below-described private lands from San Pedro Investment Group, an Arizona General Partnership, or their nominee.

Gila and Salt River Base and Meridian, Cochise County, Arizona

Parcel 1(A)

That portion of the SE quarter of the NE quarter of section 13, T. 21 S., R. 21 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, lying southerly of the Southern Pacific Railroad as it existed on November 28, 1966.

Parcel 1(B)

The NE quarter of the SE quarter of section 13, T. 21 S., R. 21 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Parcel 1(C)

Those portions of the SE quarter of the NW quarter, the NE quarter of the SW quarter and Lot 2 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, lying westerly of the Southern Pacific Railroad as it existed on November 28, 1966.

Except all coal and other minerals as reserve in the patent.

Parcel 1(D)

Lot 3 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Except all coal and other minerals as reserved in the patent.

Except that portion of the SE quarter of the NE quarter and NE quarter of the SE quarter of section 13, T. 21 S., R. 21 E., and the NE quarter of the SW quarter and Lots 2 and 3 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

Beginning at a point on the west line of said section 18, said point being N. 00°01'40" east, a distance of 2,715.21 feet from the SW corner of said section 18;

Thence N. 89°35'50" east, a distance of 203.62 feet;

Thence N. 79°13'50" east, a distance of 708.88 feet to a point on the westerly right-of-way line of the Southern Pacific Railroad;

Thence southerly along the arc of a circular curve to the right, having a central angle of 12°40'40" and a radius of 4,631.60 feet, a distance of 1,024.83 feet along said right-of-way;

Thence S. 26°44'20" E., a distance of 744.76 feet said right-of-way to the south line of said NE quarter of the SW quarter of section 18;

Thence S. 89°47'30" W., a distance of 1,793.36 feet along said line to the west line of said section 18;

Thence N. 89°56'40" W., a distance of 400.00 feet along the south line of the NE quarter of the SE quarter of said section 13;

Thence N. 07°51'40" E., a distance of 364.63 feet;

Thence N. 27°59'20" W., a distance of 314.90 feet;

Thence N. 02°13'20" W., a distance of 150.22 feet;

Thence N. 24°21'40" E., a distance of 302.02 feet;

Thence N. 12°32'40" E., a distance of 436.16 feet;

Thence S. 71°16'00" E., a distance of 297.21 feet to the Point of Beginning.

Parcel 2

T. 9 N., R. 2 W., Gila and Salt River Meridian, Yavapai County, Arizona
Sec. 1, all or part of the following patented mining claims: Campview, Chicago, Cleveland/Boston;
Sec. 2, S½NW¼, N½SW¼;
Sec. 3, lots 1 to 4, incl., S½NE¼, SE¼, S½NW¼, SW¼;
Sec. 4, lots 1 and 2, S½NE¼, SE¼;
Sec. 5, lot 4, SW¼NW¼, W½SW¼;
Sec. 6, lots 6 and 7, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½;
Sec. 10, NE¼;

Sec. 17, W½W½;

Sec. 18, lots 1 to 4, incl. E½W½, E½.

The exchange proposal involves all of the exchange proponent's interest in the surface and mineral estate of the private lands and the surface and mineral estate of the public lands. The exchange is consistent with the Bureau's land use planning objectives.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Local floodplain regulations.

3. All valid existing rights.

The lands to be acquired by the United States from San Pedro Investment Group shall be subject to certain easements, permits, and other encumbrances detailed in Schedule B of Ticor Title insurance policy 88090844 and Cochise Title Policy 30-012,674.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, and from any subsequent land exchange proposals filed by any proponent other than San Pedro Investment Group or their nominee.

The segregation of the described lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of initial publication (November 27, 1987), whichever occurs first.

Upon completion of the official appraisal, acreage adjustments will be made to equalize the values of the offered and selected lands.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: October 31, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88-25546 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-32-M

[MTM72921; MT-020-09-4212-12]

Realty Action; Intention To Exchange Lands in Wheatland County et al., MT

AGENCY: Bureau of Land Management, Miles city District Office, Interior.

ACTION: Designation of public lands in Wheatland, Golden Valley, Musselshell and Stillwater Counties, Montana, for transfer out of Federal ownership in exchange for lands owned by the State of Montana.

SUMMARY: BLM proposes to exchange public land with the State of Montana in order to achieve more efficient management of the public land through consideration of ownership.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 9. N., R. 12 E.,
Sec. 20, NW¼SE¼;
Sec. 28, S½NW¼;
Sec. 32, SE¼NE¼, NE¼SE¼.
T. 6 N., R. 15 E.,
Sec. 2, Lots 11 & 12.
T. 9 N., R. 15 E.,
Sec. 6, SE¼NE¼.
T. 8 N., R. 19 E.,
Sec. 6, Lots 4 & 5, SW¼NE¼, SE¼NW¼.
T. 11 N., R. 19 E.,
Sec. 35, E½E½.
T. 4 N., R. 22 E.,
Sec. 6, SE¼NE¼.
T. 10 N., R. 29 E.,
Sec. 12, N½NW¼.

The lands described above comprise 754.34 acres, more or less, in Wheatland, Golden Valley, Musselshell and Stillwater Counties and have been identified for disposal in the Billings Resource Area RMP/EIS. These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the Federal Register. The segregative effect will terminate upon issuance of patent to the State of Montana, upon publication in the Federal Register of termination of the segregation, or 2 years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATES: For a period up to and including December 19, 1988, interested parties may submit comments to the Miles City District Manager, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Billings Resource Area, 810 E. Main, Billings, Montana 59105.

Date: October 26, 1988.

Bruce G. Whitmarsh,

Acting District Manager.

[FR Doc. 88-25602 Filed 11-4-88; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-08-4212-13; N-46545]

Realty Action; Exchange of Public Lands in Douglas County, NV

The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian

T. 12 N., R. 21 E.,
Sec. 24, SW¼ NW¼ , NE¼ SW¼,
T. 13 N., R. 22 E.,
Sec. 20, N½NW¼ .
The area described contains 160 acres.

In exchange for these and other lands, the federal government will acquire those non-federal lands in Carson City, Nevada, from Bently Nevada Corporation, P.O. Box 157, Minden, NV 89423, described in the Notice of Realty Action published in the **Federal Register**, Vol. 53, No. 150, page 29390, on August 4, 1988.

The purpose of the exchange is to acquire river frontage lands with high recreational and historical values. The exchange is consistent with Bureau of Land Mangement planning and is supported by Carson City. The public interest will be well served by making the exchange.

The exact acreage of federal lands to be transferred or private lands to be acquired will be dependent upon a final fair market appraisal. Both the surface and mineral estates will be exchanged.

In accordance with regulations contained in 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws including the mining laws. This segregation shall terminate upon issuance of patent to the above-described public lands, upon publication in the Federal Register of a termination of the segregation, or upon expiration of 2 years from the date of this publication, whichever occurs, first. Patent of lands to be transferred from Federal ownership will contain the following reservation:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

The patentee, upon receipt of the patent, will be required to effect an easement deed for the continuation of public access along existing Pine Nut Creek Road, as it affects the afore-described lands. This easement deed, to be recorded in Douglas County, will preserve those access rights presently protected by right-of-way grant N-41270, held by Bently Nevada Corporation.

Detailed information concerning the exchange, including the environmental assessment, is available for review at the Carson City District Office.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706.

Dated this 27 day of October, 1988.

Norman L. Murray,

Acting District Manager.

[FR Doc. 88-25601 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Revision of Park Boundary: Harpers Ferry National Historical Park

The Act of June 30, 1944 (58 Stat. 645), provided for the establishment of Harpers Ferry National Historical Park. A subsequent amendment to that Act, approved October 24, 1974 (88 Stat. 1420), provided that the Secretary of the Interior may make minor revisions in the boundary by publication in the **Federal Register** of the revision after advising the Committee on Interior and Insular Affairs of the Congress of the United States.

In order to properly interpret and preserve the historic character of the Harpers Ferry National Historical Park, it is necessary to modify the existing boundary of the park to include approximately 0.47 of an acre of land.

Therefore, notice is hereby given that the exterior boundary of the Harpers Ferry National Historical Park is revised to include the following described land:

All that certain tract or parcel of land lying and being situated in Block "JJ", in said Town of Harpers Ferry.

Containing 0.47 of an acre, more or less.

This parcel of land is depicted as Tract 106-27 on Land Status Map numbered 385/92002, Segment 106, dated June 30, 1975, as revised on June 24, 1988.

The map is on file and available for inspection in the administrative office of the Harpers Ferry National Historical Park, Harpers Ferry, West Virginia 25425; in the office of the National Capital Region, 1100 Ohio Drive, SW., Washington, DC 20242; and in the office of the National Park Service, Department of the Interior, Washington, DC 20013-7127.

Date: October 14, 1988.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 88-25548 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act (Pub.L. 92-463, 86 Stat. 770, 5 U.S.C., app. 1 section 10), that a meeting of the Cape Code National Seashore Advisory Commission will be held Friday, November 18, 1988.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Code National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m. for the following reasons:

Unifinished Business
Superintendent's Report
Bicycle Study
New Business

The meeting is open to the public. It is expected that as many as 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Code National Seashore, South Wellfleet, MA 02663.

Herbert S. Cables, Jr.,

Regional Director.

[FR Doc. 88-25547 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-423 (Preliminary)]

Generic Cephalexin Capsules From Canada; Import Investigation

AGENCY: United States Intenational Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-423 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of Generic Cephalexin Capsules, provided for in item 411.76 of the Tariff Schedules of the United States (subheading 3004.20.00 of the Harmonized Tariff Schedule of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 12, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207) (see Commission interim rules (53 FR 33034 (August 29, 1988)), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Lisa Zanetti (202-252-1189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on

October 27, 1988, by Biocraft Laboratories, Inc., Elmwood Park, NJ.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all pesons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33034 (August 29, 1988)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary informatin under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on November 16, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Lisa Zanetti (202–252–1189) not later than November 14, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before November 18, 1988, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in section 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtains disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than November 22, 1988. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 2, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–25707 Filed 11–3–88; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation and address of principal office: Astra Holdings Corporation, 8260 Greensboro Drive, Suite 330, McLean, VA 22102.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Accudyne Corporation, P.O. Box 1429, Janesville, Wisconsin 53547–1429. Incorporated in the State of Wisconsin.

(ii) E. Walters & Company, Inc., 333 North Franklin Street, Elk Grove Village, Illinois 60007. Incorporated in the State of Illinois.

(iii) Kilgore Corporation, Bradford Road, Toone, Tennessee 38381–0099.

B. 1. Parent Company: Bridgestone Corporation, 10–1, Kyobashi 1-Chome, Chuo-ku, Tokyo 104, Japan.

2. Wholly-owned subsidiaries which will participate in the operations:

(i) Bridgestone (U.S.A.), Inc., a Delaware coporation.

(ii) The Firestone Tire & Rubber Company, and Ohio coprporation.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25570 Filed 11–3–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket Nos. AB–213 and AB–57; Sub-Nos. 1X and 28X]

Canadian Pacific Limited; Abandonment Exemption in Cook County, IL; Soo Line Railroad Co.; Discontinuance of Service; Exemption in Cook County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Canadian Pacific Limited of and discontinuance of operations by Soo Line Railroad Company over 31,696 track feet of rail line generally between South Canal Street and South Clinton Street in Chicago, Cook County, IL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 14, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 11527(c)(2) must be filed by November 11, 1988, and petitions for reconsideration must be filed by November 29, 1988. Requests for a public use condition must be filed by November 11, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB–213 (Sub-No. 1X) and Docket No. AB–57 (Sub-No. 28X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives:

Larry D. Starns, Suite 1000, 105 South Fifth Street, Minneapolis, MN 55402, and

Terence M. Hynes, Brian L. Rubin, 1722 Eye Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 775–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

Decided: October 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25571 Filed 11–3–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Village of Endicott and Town of Union, NY

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Village of Endicott and Town of Union,* Civil Action No. 88–1067, was lodged with the United States District Court for the Northern District of New York on October 14, 1988. The action was filed pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The complaint seeks a court order requiring the defendants to abate an endangerment to public health or welfare or the environment and a declaratory judgment for recovery of certain costs to be incurred by the United States in connection with the Endicott Village Wellfield Site (the "Wellfield Site"), in the Village of Endicott, Broome County, New York.

The consent decree provides that the Village of Endicott, New York, and the Town of Union, New York, will fund and implement the remedial action for a cleanup of the Wellfield Site. The remedial action consists of: (1) The installation of a groundwater treatment facility near the "Ranney Well," using air stripping and disinfection processes; (2) continued operation of a purge well at the Wellfield Site as an interim measure aimed at intercepting and removing some of the contaminants flowing toward the Ranney Well; and (3) continued monitoring designed to detect the presence in Ranney Well water of a category of hazardous substances known as volatile organic compounds. The defendants also will pay EPA's costs in overseeing implementation of the remedial action.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Village of Endicott and Town of Union,* DOJ Reference No. 90–11–3–299.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

U.S. Attorney's Office, Northern District of New York, 369 Federal Building, Syracuse, New York 13260, Contact: Craig Benedict, (315) 423–5165.

U.S. EPA, Region II, Office of Regional Counsel, 26 Federal Plaza, New York, New York 10278, Contact: Paul Simon, (212) 264–4710.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $9.40 payable to Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–25613 Filed 11–3–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; H.F. Perkins Insulation Co., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that proposed Consent Decree in *United States v. H.F. Perkins Insulation Co., et al.,* Civil Action No. C–1–86–1239, has been lodged with the United States District Court for the Southern District of Ohio. The complaint filed by the United States alleged that the defendant violated sections 112(c) and 144(a)(1) of the Clean Air Act, 42 U.S.C. 7412(c) and 7414(a)(1), and the National Emission Standards for Hazardous Air Pollutants—asbestos ("the asbestos NESHAPs") promulgaged thereunder, by failing to comply with various notification and work-practice requirements pertaining to owners and operators of building renovation and demolition projects involving the removal of friable asbestos or asbestos-containing materials.

The proposed Decree establishes procedures for ensuring the settling defendants' future compliance with the asbestos NESHAPs by requiring defendants to adopt specified office practices and an employee training program designed to make defendants and their employees better aware of applicable NESHAPs requirements. In addition, the proposed Consent Decree requires defendants R.E. Schweitzer Construction Co. and Second Street Associates to pay a total civil penalty of $10,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to the *United States v. H.F.*

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

Perkins Insulation Co., et al., D.J. Reference No. 90–5–2–1–1047.

The proposed Consent Decree may be examined at the office of the United States Attorney, 100 E. Fifth Street, Cincinnati, Ohio, 45202, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chcago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 6317, Ninth Street and Pennsylvania, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or my mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $1.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–25612 Filed 11–3–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Judgment; Kearny Steel Container Corp.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on October 7, 1988, a proposed consent decree in *United States v. Kearny Steel Container Corp.*, Civil Action No. 88–438, was lodged with the United States District Court for the District of New Jersey. This consent decree settled a lawsuit filed on January 22, 1988 pursuant to section 113 of the Clean Air Act (the "Act"), 42 U.S.C. 7413, for injunctive relief and for the assessment of civil penalties against Kearny Steel Container Corporation ("Kearny Steel"). The complaint is based on, among other things, Kearny Steel's use of certain surface coating formulations that are applied to the interior of shipping containers which are reconditioned by Kearny Steel at its facility in Newark, New Jersey. The complaint alleged, among other things, that the surface coating formulations used by Kearny Steel emitted volatile organic substances ("VOS") in excess of the applicable emission standards for such surface coating operations required by Title 7, Chapter 27, Subchapter 16, of the New Jersey Administrative Code ("N.J.A.C. 7:27–16"), and that Kearny Steel operated an incinerator beginning on approximately June 1, 1987, until approximately September 30, 1987, that emitted particles of waste and unburned ash large enough to be visible while suspended in the atmosphere in excess of the emission standards for incinerators required by N.J.A.C. 7:27–8.3(e), 7:27–11.3(c) and 7:27–11.5(c).

Under the terms of the proposed consent decree, Kearny Steel shall be required to continue to maintain compliance with the Clean Air Act and all applicable state regulations,including the VOS emission standards at N.J.A.C. 7:27–16, the incinerator regulations at N.J.A.C. 7:27–11, the permit requirements at N.J.A.C. 7:27–8, and the open burning regulations at N.J.A.C. 7:27–2.2. Kearny Steel is also required to pay a civil penalty of $26,000 with respect to violations of the Clean Air Act and state regulations in two installments within sixty (60) days of the date the proposed consent decree is entered by the Court. Kearny Steel is also required to submit quarterly reports, detailing, among other things, the VOS content of any surface coating formulations used in the reconditioning process, along with the dates such surface coating formulations were used.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. All comments should refer to *United States v. Kearny Steel Container Corp.*, D.J. Ref. 90–5–2–1–118.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

EPA Region II

Contact: Alexandra Callam, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278 (212) 264–2211

United States Attorney's Office

Contact: Jerome L. Merin, Assistant United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102 (201) 348–2944

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1250, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044–7611. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural resources Division, United States Department of Justice. When requesting a copy of the proposed consent decree, please enclose a check for copying costs in the amount of $1.40 payable to the Treasurer of the United States.

James L. Byrnes,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–25605 Filed 11–3–88; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Biotechnology Research and Development Corp.

Notice is hereby given that, on September 27, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Biotechnology Research and Development Corporation ("BRDC") filed a written supplemental notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the agreements that have been finalized and executed. The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust damages under specified circumstances. Pursuant to Section 6(b) of the Act, the agreements that have been finalized and executed since the original notification are set out below.

BRDC has entered into a Master Agreement with its shareholders which establishes the procedure of the admission of additional shareholders and governs the research, patent, and technology licensing activities of BRDC. BRDC has also entered into a Shareholder Agreement with its shareholders which places restrictions on the rights of shareholders to transfer their shares, provides for the acquisition by BRDC of the shares of a withdrawing shareholder, and requires each shareholder to vote for members of BRDC's Board of Directors in accordance with the Shareholder Agreement. BRDC has entered into a Master Research and Development Agreement with the Agricultural Research Service ("ARS") which governs all research activities funded by BRDC at the Northern Regional Research Center located in Peoria, Illinois, and other facilities of the ARS. BRDC has entered into a Licensing and Royalty Sharing Agreement with the National Technical Information Service ("NTIS") which governs the patenting

and licensing of all inventions in which BRDC and ARS have a co-ownership interest. BRDC has entered into a Master Research and Development Agreement with the Board of Trustees of the University of Illinois ("Illinois Agreement") which governs all research activities funded by BRDC at the University of Illinois, and the patenting and licensing of all inventions in which BRDC and the University of Illinois have co-ownership interest. The shareholders and objectives remain the same.

On April 12, 1988, BRDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on May 12, 1988, 53 FR 16919.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-25604 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Development of Measurement and Control Technology

Notice is hereby given that on August 31, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Measurement and Control Engineering Center of the University of Tennessee filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project in the Development of Measurement and Control Technology. The notice discloses (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of the parties to the Measurement and Control Engineering Center of the University of Tennessee and its general areas of planned activities are given below.

The parties to the Measurement and Control Engineering Center are as follows:

Aluminum Company of America
Amoco Corporation
Celanese Corporation
DOW Chemical Company, U.S.A.
Martin Marietta Energy Systems
Eastman Kodak Company
Texas Instruments, Inc.

The objectives of the Measurement and Control Engineering Center are to sponsor research which is focused on the theoretical and practical developments in measurement and controls, concentrating on areas that will significantly improve the productivity, reliability, and safety of industrial systems and processes, to serve as a focal point for technology transfer and information exchange for the measurement and control field, and to train graduate level students in the field of measurement and control engineering.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-25610 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* (the "Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") filed written notification with the Attorney General and the Federal Trade Commission on September 13, 1988 concerning the identities of additional members of the NCMS and the change of the NCMS state of incorporation. The written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The NCMS formerly was a nonprofit public benefit corporation organized under the laws of the State of California. As of July 21, 1988, the California corporation changed its state of incorporation by merging into a Delaware shell corporation organized on May 3, 1988. Like the former California Corporation, the Delaware corporation will undertake research in the areas of production equipment design, analysis, testing and control, manufacturing data and factory control, manufacturing processes and materials, manufacturing operations, information and technology transfer and strategic issues. The Delaware corporation as the surviving corporation will continue under the name National Center for Manufacturing Sciences, Inc. with revised Bylaws. The principal place of business continues to be at 900 Victors way, Ann Arbor, Michigan 48108.

The following are additional parties which have become members of the NCMS:

Bresson, Rupp, Lipa & Company
Lehr Precision, Inc.
Prime Technology, Inc.

As of August 10, 1988, due to a change from domestic to foreign ownership, the following companies have ceased to be members of the NCMS:

International Cybernetics Corporation
Raycon Textron, Inc.

No other changes have been made in either the membership or planned activity of the NCMS.

On February 20, 1987, the NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987, 52 FR 8375. On April 15 and May 5, 1988, the NCMS filed additional notices identifying its initial membership and the Department of Justice published these notices in the **Federal Register** pursuant to section 6(b) of the Act of June 2, 1988, 53 FR 20194. On July 11, 1988, the NCMS filed another additional notification of a change in membership, which notice appeared in the **Federal Register** on August 19, 1988, 53 FR 31771.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88-25611 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

United States Trustee Program; Certification to the United States Court of Appeals for the Ninth Circuit; Alaska, et al

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Ninth Circuit on this date that, in the region specified in paragraph 581(a)(18) of title 28, United States Code, composed of the federal judicial districts for the States of Alaska, Idaho (exclusive of Yellowstone National Park), Montana (exclusive of Yellowstone National Park), Oregon, and Washington, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this dates to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Dated: October 20, 1988

Dick Thornburgh,

Attorney General.

[FR Doc. 88-25617 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

United States Trustee Program; Certification to the United States Court of Appeals for the Eighth Circuit; Arkansas, et al.

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Eighth Circuit on this date that, in the region specified in paragraph 581(a)(13) of title 28, United States Code, composed of the judicial districts established for the States of Arkansas, Nebraska, and Missouri, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the adminuistration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: October 20, 1988.

Dick Thornburgh,

Attorney General.

[FR Doc. 88-25616 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

United States Trustee Program; Certification to the United States Court of Appeals for the Ninth Circuit; California and Nevada

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Ninth Circuit on this date that, in the region specified in paragraph 581(a)(17) of title 28, United States Code, composed of the Eastern District of California and the Northern District of California; and the judicial district established for the State of Nevada, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: October 20, 1988.

Dick Thornburgh,

Attorney General.

[FR Doc. 88-25619 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

United States Trustee Program; Certification to the United States Court of Appeals for the Ninth Circuit; California, et al.

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Ninth Circuit on this date that, in the region specified in paragraph 581(a)(15) of title 28, United States Code, composed of the Southern District of California; and the judicial districts established for the State of Hawaii, and for Guam and the Commonwealth of the Northern Mariana Islands, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days this date as to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: October 20, 1988.

Dick Thornburgh,

Attorney General.

[FR Doc. 88-25618 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

United States Trustee Program; Certification to the United States Court of Appeals for the Fifth Circuit; Louisiana and Mississippi

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Fifth Circuit on this date that, in the region specified in paragraph 581(a)(5) of title 28, United States Code, composed of the judicial districts established for the States of Louisiana and Mississippi, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: October 20, 1988.

Dick Thornburgh,

Attorney General.

[FR Doc. 88-25615 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

United States Trustee program; Certification to the United States Court of Appeals for the Fifth Circuit; Texas

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Fifth Circuit on this date that, in the region specified in paragraph 581(a)(7) of title 28, United States Code, composed of the Southern District of Texas and the Western District of Texas, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: October 20, 1988.

Dick Thornburgh,

Attorney General.

[FR Doc. 88-25614 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Selection of States for Job Corps Centers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Department of Labor requests information to assist in the selection of States for new Job Corps centers. This notice specifies the criteria for selection.

DATE: Comments are requested by December 5, 1988.

ADDRESS: Comments shall be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Room N-4508, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Peter E. Rell Director, Office of Job Corps.

FOR FURTHER INFORMATION CONTACT: Peter E. Rell, Director, Office of Job Corps; Telephone: 202-535-0550.

SUPPLEMENTARY INFORMATION: The Department of Labor intends to open six new Job Corps centers. Congress appropriated $48 million in the 1988/89 appropriations bills to undertake this effort. The Senate Appropriations Committee language specified the following criteria for the Department to take into consideration in its selection of sites for new Job Corps centers, in addition to a general assessment of need. These are "priority consideration to States currently without a Job Corps center; preference to States where existing Government facilities can be used at a nominal cost; preference to States which have demonstrated a commitment to linking a center with other Federal, State, and local employment, training, and education programs; consideration to States which have shown a commitment to utilizing the Job Corps program in conjunction with other training programs to meet the needs of individuals with other barriers to employment, such as single parents; priority consideration to enhancing Job Corps services for persons with disabilities."

Based on previously available information, the Department has selected 2 States which have a demonstrated need as well as explicitly meeting criteria in the Senate Committee language. These are Kansas and Connecticut.

The Department of Labor has received initial expressions of interest from several other States and will follow up with these States. This Notice solicits formal input from all interested States to assist in the selection of the remaining 4 center sites. Information which would be helpful to the Department includes any information related to the factors cited above from the Senate Committee language as well as other information demonstrating particular need.

The Job Corps program is designed and intended to serve severely disadvantaged youth in need of intensive services who typically (1) have not succeeded in the traditional public school setting, (2) have experienced difficulty in channeling their behavior and energies in productive ways, (3) are unemployed and lack requisite education and skills to obtain meaningful employment, and (4) are poor.

The Department hereby requests additional input from interested parties in order to assist in its selection process for the additional sites.

Signed at Washington, DC, this 31st day of October 1988.

Roberts T. Jones,

Assistant Secretary of Labor

[FR Doc. 88-25631 Filed 11-3-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
- MA88-1 (Jan. 8, 1988) ..... pp. 376-380, 387.
- MA88-2 (Jan. 8, 1988) ..... pp. 392-395, 397.
- MA88-3 (Jan. 8, 1988) ..... pp. 406-408.

Rhode Island:
- RI88-1 (Jan. 8, 1988) ..... pp. 1018-1020.

Volume II

Illinois:
- IL88-1 (Jan. 8, 1988) ..... pp. 68-94.
- IL88-7 (Jan. 8, 1988) ..... pp. 138.
- IL88-10 (Jan. 8, 1988) ..... pp. 156.
- IL88-12 (Jan. 8, 1988) ..... pp. 164-172b.
- IL88-16 (Jan. 8, 1988) ..... pp. 204-206.

Indiana:
- IN88-1 (Jan. 8, 1988) ..... pp. 234-237, 239.
- IN88-2 (Jan. 8, 1988) ..... pp. 248-252.
- IN88-3 (Jan. 8, 1988) ..... pp. 266-270.
- IN88-4 (Jan. 8, 1988) ..... pp. 278, 280-281.
- IN88-5 (Jan. 8, 1988) ..... pp. 290-292.
- IN88-6 (Jan. 8, 1988) ..... p. 300.

Missouri:
- MO88-1 (Jan. 8, 1988) ..... pp. 584.

Volume III

Idaho:
- ID88-1 (Jan. 8, 1988) ..... pp. 143-144.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which incudes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 28th day of October 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-25400 Filed 11-3-88; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-93)]

National Environmental Policy Act; Notice of Availability of Final Environmental Impact Statement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: Notice is hereby given of the public availability of the final Environmental Impact Statement (EIS) for the Galileo and Ulysses Missions (Tier-1). This document addresses National Aeronautics and Space Administration decisionmaking associated with continuing to make modifications to the Galileo and Ulysses spacecraft to preserve the launch opportunity on the Space Transportation System (STS) Shuttle in October 1989 and October 1990, respectively.

Comments on the supplemental draft EIS were previously solicited from State and local agencies and members of the public through a notice in the Federal Register of November 30, 1987.

Copies of the supplemental draft and final Statement have been furnished to the Council on Environmental Quality; the Environmental Protection Agency; the Departments of Air Force, Commerce, Defense, Energy, Health and Human Services, and Transportation; the National Academy of Sciences; the Nuclear Regulatory Commission; the Office of Management and Budget; to appropriate state and local agencies; and to numerous private organizations.

Copies of the final statement may be obtained or examined at any of the following locations:

(a) NASA Headquarters, Public Documents Room (Room 126), 600 Independence Avenue, SW., Washington, DC 20546.

(b) NASA/Ames Research Center, (Building 201, Room 17), Moffett Field, CA 94035.

(c) NASA/Ames Research Center, Dryden Flight Research Facility (Building 4800, Room 1017), P.O. Box 273, Edwards, CA 93523.

(d) NASA/Goddard Space Flight Center (Building 8, Room 150), Greenbelt, MD 20771.

(e) NASA/Johnson Space Center (Building 1, Room 136), Houston, TX 77058.

(f) NASA/Kennedy Space Center (Headquarters Building, Room 1207), Kennedy Space Center, FL 32899.

(g) NASA/Langley Research Center (Building 1219, Room 304), Hampton VA 23365.

(h) NASA/Lewis Research Center (Administration Building, Room 120), 21000 Brookpark Road, Cleveland, OH 44135.

(i) NASA/Marshall Space Flight Center (Building 4200, Room G-11), Huntsville, AL 35812.

(j) NASA/Stennis Space Center (Building 1100, Room A-213), Bay St. Louis, MS 39520.

(k) Jet Propulsion Laboratory (Building 180, Room 600), 4800 Oak Grove Drive, Pasadena, CA 91109.

(l) NASA/Goddard Space Flight Center, Wallops Flight Facility (Library Building, Room E-105), Wallops Island, VA 23337.

October 21, 1988.

C. Howard Robins, Jr.,

Deputy Associate Administrator for Management.

[FR Doc. 88-25573 Filed 11-3-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313]

Arkansas Power & Light Co.; Arkansas Nuclear One, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Operating License No. DPR-51 issued to Arkansas Power & Light Company (AP&L or the licensee) for operation of the Arkansas Nuclear One, Unit 1 (ANO-1) located in Pope County, Arkansas.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would change the plant Technical Specifications (TSs) to reflect the Cycle 9 core reload and to change the variable low pressure trip setpoint. The affected TS Sections are as follows: Section 2.1, Safety Limits, Reactor Core; Section 2.3, Limiting Safety System Settings, Protective Instrumentation; Section 3.5.2, Control Rod Group and Power Distribution Limits; and Section 5.3, Reactor Design Features.

The proposed action is in accordance with the licensee's applications for amendment dated July 20 and August 31, 1988.

Need for the Proposed Action

The proposed TS changes are needed to support the loading of 60 fresh fuel assemblies (FAs) and 52 burnable poison rod assemblies (BPRAs), the shuffling of 116 FAs, the reinsertion of one previously used FA, and the replacement of 8 black axial power shaping rods (APSRs) with grey APSRs. The core locations of the 68 control rod assemblies (CRAs) are the same as those of the previous cycle, but the group designations are different. In addition other TS changes proposed would permit revised quadrant tilt limits, and a less restrictive variable low pressure trip setpoint.

Environmental Impacts of the Proposed Action

The Commission has evaluated the environmental impact of the proposed amendment and has determined that neither the probability of accidents nor the post-accident radiological plant releases would be greater then previously determined. The proposed amendment does not otherwise affect radiological plant effluents during normal operation. In addition, the proposed amendment does not have any influence upon occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed TS changes involve features located entirely within the restricted area as defined in 10 CFR Part 20. They would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing regarding the proposed changes to the TSs, was published in the Federal Register on September 16, 1988 (53 FR 36141). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would only result in requiring a revised core reload design to operate within the present TS requirements.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's safety analysis and changes to the TSs that support the proposed amendment. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the applications for license amendments dated July 20 and August 31, 1988 which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-25594 Filed 11-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454, 50-455, 50-456, 50-457]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License; Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37 and NPF-66, issued to the Commonwealth Edison (the licensee), for operation of the Byron Station, Units 1 and 2 located in Ogle County, Illinois, and Facility Operating License Nos. NPF-72 and NPF-77, issued to the licensee for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The amendments would change Technical Specifications 4.6.1.3a to be consistent with the Standard Technical Specifications and to allow continuous pressure testing of the containment air lock door seal gaskets.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulation.

By December 5, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petitions for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interst of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permited with particular reference of the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days perior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800;-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the peitition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its

technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 4, 1988, which is available to public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-25653 Filed 11-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-20880, License No. 35-23304-01, EA 88-212]

Hole Truth Inc., Oklahoma City, OK; Order Modifying License, Effective Immediately

I

Hole Truth, Inc. (licensee), is the holder of Material License No. 35-23304-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 30, 1984. The license is due to expire on May 31, 1989. The license authorizes the licensee to process sealed sources of americium-241 and cesium-137; to possess and use any form of iodine-131, iridium-192, gold-198 and silver-110; to possess and use any form except liquids of scandium-46; and to possess and use beads or wires of cobalt-60, in tracer studies in oil and gas wells.

II

On July 14–15, 1988, NRC Region IV conducted an unannounced inspection of the licensee's activities at the licensee's facility in Oklahoma City, Oklahoma. The inspection disclosed numerous apparent violations of NRC and license requirements. The results of the inspection were discussed with the licensee at an Enforcement Conference on August 30, 1988. As a result of information provided by the licensee at the Enforcement Conference, two violations were modified, one violation was withdrawn and one additional violation was identified. The resulting violations are discribed in more detail in the Notice of Violation being issued this date. These violations involve the:

1. Failure to possess material such that the radiation levels in an unrestricted area were not in excess of 100 millirem in any 7 consecutive days as required by 10 CFR 20.105 (b)(2).

2. Failure to keep records of receipt of byproduct material from June 16 to October 4, 1987 in accordance with 10 CFR 30.51(a).

3. Failure to maintain records for each use of licensed material in accordance with 10 CFR 39.39.

4. Failure of an individual to wear personnel dosimetry while working with licensed material in accordance with 10 CFR 39.65.

5. Failure to block and brace radioactive material packages during transport in accordance with 49 CFR 177.842(d) and 10 CFR 71.5(a).

6. Failure to use Specification 7A, Type A packaging for transport of radioactive material not in excess of A-2 limits in accordance with 49 CFR 173.415(a) and 10 CFR 71.5(a).

7. Failure to exchange personnel dosimetry monthly for processing by the supplier from January to June 1988 as required by License Condition 19 and the license application.

8. Failure to maintain records of monthly surveys of the storage bunker in accordance with License Condition 19 and operating procedures.

9. Failure to perform adequate surveys of vehicles used for storing and transporting licensed material and keep records of such surveys in accordance with License Condition 19 and operating procedures. Specifically, the licensee's surveys failed to identify the presence of a vial containing approximately 10 millicuries of iridium-192 which had been present in the locked rear compartment of a pickup truck since July 9, 1988 and emitted measured radiation levels at the rear surface of the truck of 1.5 millirem per hour.

10. Failure to perform adequate surveys of job site operations and keep records of such surveys in accordance with License Condition 19 and operating procedures. Specifically, the licensee's surveys failed to identify unlabeled pipe couplings contaminated with radioactive material which had measured radiation levels of 0.6 mr/hr at 6 inches from the surface of the pipe coupling.

11. Failure to maintain records of surveys of licensed materials upon receipt in accordance with License Condition 19 and operating procedures.

12. Failure to maintain up-to-date records of radiation exposures as measured by TLD personnel dosimeters for 1987 in accordance with License Condition 19 and operating procedures.

13. Failure to return unused radioactive material to the storage bunker in accordance with License Condition 19 and operating procedures.

14. Failure to maintain disposal records of radioactive materials from June 16, 1987 to July 15, 1988 in accordance with License Condition 19 and operating procedures.

15. Failure to label as a radioactive source items which contained fixed contamination from radioactive material in excess of 0.2 mR/hr, as required by License Condition 19 and operating procedures.

III

The president and owner of Hole Truth Inc. (licensee) and his consultant attended the Enforcement Conference held on August 30, 1988. During the Enforcement Conference, the licensee stated that, (1) surveys had been performed, but no records were available; (2) corrective actions had been taken on all items discussed; and (3) that he only lacked duplicate copies of personnel monitoring records to be in full compliance with NRC requirements. Furthermore, the licensee committed to having its consultant inspect its operations on a quarterly basis for at least one year and for the owner's wife who had just finished a radiation safety course given by the consultant to aid in the management of the radiation safety records for the company. The licensee's consultant indicated that the apparent violations were due largely to the pressures brought about by the impact of the economic downturn in the oil industry which led to the bankruptcy of two well logging companies with which the licensee has been associated. The licensee did not dispute the statements of its consultant.

IV

On September 23, 1988, the NRC reinspected the licensee's program and found that all but one of the apparent violations resulting from the July 14–15, 1988, inspection had been corrected. Nonetheless, the fact that these violations occurred remains a significant concern to the NRC because collectively they are indicative of a breakdown of management oversight and control. In addition, the apparent abrupt decline in the quality of the program, when compared to the licensee's previous performance, is also of significant concern. Further, although the licensee maintains that it performed the surveys referenced above, it is clear from the NRC's review that some of the surveys

were inadequate, in that the licensee failed to identify during a vehicle survey the presence of a vial containing approximately 10 millicuries of iridium-192 which had been present in the locked rear compartment of a pick-up truck since July 9, 1988 and emitted measured radiation levels at the rear surface of the truck of 1.5 millirem per hour. In another case, surveys did not identify unlabeled pipe couplings having radiation levels in excess of 0.2 mR/hr. The nature and number of the violations identified during the July 14–15, 1988 inspection, including failure to identify radiation levels in an unrestricted area and on unlabeled pipe couplings, raises a question concerning the licensee's commitment and ability to comply with the Commission's requirements in the future. Consequently, without the further action ordered here, I lack the reasonable assurance that licensed activities will be properly conducted such that the health and safety of the public will be adequately protected. Therefore, I have determined, pursuant to 10 CFR 2.204, that the public health, safety, and interest require that the license should be modified, as described below, effective immediately, and that no prior notice is required.

V

Accordingly, pursuant to sections 81, 161b, i, and o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR 2.204 and Parts 30 and 39, IT IS HEREBY ORDERED THAT, EFFECTIVE IMMEDIATELY:

License No. 35–23304–01 is modified to require that:

A. An independent party, qualified in the area of radiation safety, perform quarterly audits of the Radiation Safety Program. The audits shall continue for a period of 2 years. The credentials of the independent party and the proposed audit program shall be submitted to NRC Region IV for review and approval within 30 days of the date of this Order.

Audits shall be conducted for the purpose of evaluating the effectiveness of the radiation safety program in assuring adherence to NRC requirements and safe performance of licensed activities. These audits shall include, at a minimum:

1. Assessment of the effectiveness of management control and oversight of the program in assuring that radioactive material is used safely and that operations are conducted in compliance with NRC requirements.

2. Observation and evaluation of the performance of the licensee while engaged in licensed activities at a well logging field site at least twice during the two year audit period provided that the field site audits are separated by at least 12 months.

3. Assessment of the quality and accuracy of records required to be maintained concerning licensed activities.

The first such independent audit shall be conducted within 1 month of the NRC's notification to the licensee of NRC's approval of the audit program. The results of each audit shall be simultaneously provided to the licensee and the Regional Administrator, NRC Region IV, within 2 weeks of completion of the audit. The licensee shall provide to the Regional Administrator, NRC Region IV, within 30 days of receipt of the results of each audit, a description of the corrective actions taken for each recommendation by the independent party and justification for any recommendation not accepted.

The Regional Administrator, NRC Region IV, may in writing, relax or rescind any of these conditions for good cause shown.

VI

The licensee or any person adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the licensee requests a hearing, that person shall set forth with particularly the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this Order or a request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland, this 24th day of October 1988.

[FR Doc. 88–25593 Filed 11–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–443–OL–1, 50–444–OL–1 (Onsite Emergency Planning and Safety Issues)]

Public Service Company of New Hampshire et al.; (Seabrook Station, Units 1 and 2); Appointment of Adjudicatory Employees

Commissioners: Lando W. Zech, Jr., Chairman; Thomas M. Roberts, Kenneth M. Carr, Kenneth C. Rogers, James R. Curtiss.

In accord with the requirements of 10 CFR 2.4, notice is hereby given that Francis Paul Cardile, a Commission employee in the Office of Nuclear Reactor Research (RES), and Jack E. Rosenthal, a Commission employee in the Office for Analysis and Evaluation of Operational Data (AEOD), have been appointed as Commission adjudicatory employees within the meaning of § 2.4 to advise the Commission on issues in the above-captioned proceeding related to the Applicants' plan for funding decommissioning and commitments under that plan.

Mr. Cardile is a Nuclear Engineer in the Materials Engineering Branch, Division of Engineering, (RES). Mr. Rosenthal is Chief of the Reactor Operations Analysis Branch, Division of Safety Programs, AEOD. Neither Mr. Cardile nor Mr. Rosenthal has been engaged in performance of any investigative or litigating function in connection with the Seabrook facility or in any factually related proceeding.

Until such time as a final decision is issued in the captioned matter, interested persons outside the agency are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Cardile and Mr. Rosenthal.

It is so Ordered.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

Dated at Rockville, Maryland this 31st day of October, 1988.

[FR Doc. 88–25591 Filed 11–3–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26235; File No. SR-CBOE-88-18]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Automated Submission of Trading Data

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1988, the Chicago Board Options Exchange, Incorporated, ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 15.7 Automated Submission of Trading Data

A member or member organization shall submit the trade data elements specified below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions that are the subject of a particular request for information made by the Exchange:

(a) If the transaction was a proprietary transaction effected or caused to be effected by the member or member organization for any account in which such member or member organization, or any member, allied number, approved person, partner, officer, director, or employee thereof, is directly or indirectly interested, such member or member organization shall submit or cause to be submitted the following information:

1. Clearing house number, or alpha symbol as used by the member or the member organization submitting the data;

2. Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member(s) or member organization(s) on the opposite side of the transaction;

3. Identifying symbol assigned to the security and where applicable for options the month and series symbols;

4. Date Transaction was executed;

5. Number of option contracts for each specific transaction and whether each transaction was an opening or closing purchase or sale; and where applicable the number of shares traded or held by accounts for which option data is submitted; and where applicable the number of shares for each specific transaction and whether each transaction was a purchase, sale or short sale;

6. Transaction Price;

7. Account number; and

8. Market center where transaction was executed.

(b) If the transaction was effected or caused to be effected by the member organization for any customer account, such member organization shall submit or cause to be submitted the following information:

1. Data elements (1) through (8) as contained in paragraph (a) above;

2. Customer name, address (es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s); and

3. If the transaction was effected for a member broker-dealer customer, whether the broker-dealer was acting as a principal or agent on the transaction or transactions that are the subject of the Exchange's request.

(c) In addition to the above trade data elements, a member or member organization shall submit such other information in such automated format as may be prescribed by the Exchange, as may from time to time be required.

(d) The Exchange may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (a) and (b) above be submitted to the Exchange in an automated format.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to require its members and member organizations to submit the customer and propietary trading data that it routinely requests in connection with its market surveillance inquiries (commonly referred to as "blue sheet information") [1] in the universal automated format developed by the Intermarket Surveillance Group ("ISG") and the Securities Industry Association at the request of the Securities and Exchange Commission ("SEC"). The Exchange anticipates that implementation of the automated "blue sheet" format will significantly enhance its regulatory and surveillance capabilities.

The Exchange's review of "blue information" is currently complicated by two factors. First, member organizations often do not submit the information on a timely basis, thus delaying the Exchange's inquiry. Second, in the usual course of an inquiry, a market surveillance analyst manually reviews trading runs submitted by several different firms, each of which may follow a different format and contain somewhat different information. Such a review is time consuming and difficult, particularly where a large number of transactions, firms and accounts are involved in the suspect trading.

The automated format will enable market surveillance analysts to evaluate "blue sheet information" quickly and comprehensively. For example, trading data could be sorted alphabetically (to detect trading by particular individuals or families), geographically (to detect concentrations in certain locations), by size (to identify transactions meriting special attention), chronologically, by price, or in any other manner desired. Information from several members also could be analyzed simultaneously to uncover violative conduct occurring among firms. As an additional benefit, the submission of "blue sheet information" in the automated format may expedite member from responses to information requests, since they will no longer need to produce potentially voluminous "hard copy" records.

The new rule should not impose a significant additional regulatory burden on members. While some firms may have to make initial changes to comply with the rule, ultimately they will be able to make a more cost-effective use of their resources by eliminating an otherwise time-consuming, labor intensive task. In addition, since most member organizations will have to develop automated "blue sheet" capabilities to comply with similar rules at the New York Stock Exchange ("NYSE") and American Stock Exchange ("AMEX") (*infra*, note 2) they

[1] The term "blue sheet information" is derived from the blue SEC form, which was used by broker dealers to respond to SEC requests for trading data prior to the widespread use of computers.

could utilize the same systems to comply with the CBOE rule. In recognition of the burden that may be imposed on smaller member organizations, however, paragraph (d) of the proposed rule authorizes the Exchange to grant exceptions on a case-by-case basis to the automated reporting requirement where appropriate.

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it will improve the Exchange's regulatory and surveillance capabilities, enabling it to provide increased investor protection, assist in the prevention of fraudulent and manipulative acts and practices, and promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated effectiveness of this proposed rule change pursuant to section 19(b)(2) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the Federal Register. The proposed rule change is virtually identical to proposals submitted by the Amex and the NYSE that were noticed for the full thirty-day period and were recently approved by the Commission.[2] Moreover, accelerated effectiveness of this rule will enable the exchanges to issue a common circular regarding application of the rule to all members.[3]

The Commission finds, as it did with the Amex and NYSE proposals, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that adoption of the universal automated format for blue sheet information under the proposed rule will improve significantly the ability of CBOE's regulatory and surveillance staff to conduct their market surveillance and monitoring responsibilities under section 6(b)(1), 6(b)(2) and other provisions of the Act. Receipt of market surveillance information in an automated format will permit the Exchange's surveillance staff to review and analyze the data more rapidly and effectively by enabling them to directly enter the data into the Exchange's own computer system for analysis. Additionally, in instances where the Exchange refers matters to the Commission for further action, availability of the pertinent blue sheet information in an automated format also will facilitate the Commission's ability to analyze and evaluate relevant trading and market surveillance data. Finally, the Commission believes that adoption of the automated format will make it easier for member firms complying with the proposed rules to gather and submit information in response to requests from the Exchanges in a timely manner and will thus reduce the regulatory burden on those firms.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 25, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 1, 1988.

[FR Doc. 88-25628 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 31, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Baltimore Bancorp
Common Stock, $5 Par Value (File No. 7-3977)

Sterling Chemicals, Inc.
Common Stock, $.01 Par Value (File No. 7-3978)

Cypress Semiconductor Corporation
Common Stock, $0.01 Par Value (File No. 7-3979)

Jackpot Enterprises, Inc.
Common Stock, $0.01 Par Value (File No. 7-3980)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 21, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25629 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

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[2] *See* Securities Exchange Act Release No. 25859 (June 27, 1988), 53 FR 25029, approving File Nos. SR-Amex-88-4 and SR-NYSE-87-23.

[3] Many members firms have made programming modifications in order to comply with the NYSE and Amex rules and currently are submitting blue sheet information in automated format. Other member firms will be expected to meet the compliance requirement deadline of February 8, 1989 set by the ISG, or to seek an exemption under paragraph (d) of the proposed rule.

[Rel. No. 34-26228; file Nos. SR-Phlx-88-29, SR-CBOE-88-19]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Chicago Board Options Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Changes

On October 3 and 17, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx") and the Chicago Board Options Exchange, Inc. ("CBOE") (collectively the "Exchanges"), respectively, submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder, proposed rule changes to amend, respectively, Phlx rule 1001 and CBOE Rule 4.11 to provide greater flexibility in the establishment of position and exercise limits for stock options.

Currently, position limits for individual stock options are determined in accordance with a three-tiered system established in April 1985.[3] Pursuant to this system, an underlying stock which meets specific standards governing trading volume and/or number of outstanding shares will qualify the overlying option for either an 8,000, 5,500, or 3,000 contract position limit. Under current practices, the Exchanges review the volume and outstanding share information of all underlying stocks every six months (in January and July) to determine which contract limit shall apply for the following six months. If an underlying stock meets the requirements of a higher position limit, the higher limit is effective the first business day following the January or July review period.

The proposed rule changes will revise the current review procedures such that the Exchanges, in their descretion, may increase an option's position limit before the next six-month review date if, subsequent to one six-month review but prior to the next review, and increase in the option's trading volume and/or outstanding shares would make a stock eligible for a higher position limit at the next review period. Nothing in the proposed rule changes, however, shall change the current six-month review process that occurs in January and July. In this regard, even if an option becomes eligible for a higher position limit between review periods, all subsequent calculations of that option's trading volume and/or outstanding shares for position limit purposes will continue to be based upon the six-month period immediately preceding the January or July review period, whichever is appropriate. The proposed rule changes also do not alter the existing position limit criteria relating to outstanding shares and/or trading volume.[4]

The Exchanges state that the proposed rule changes are designed to provide liquidity to certain options without increasing the potential for market manipulation. The Exchanges note that frequently an underlying stock meets or surpasses the eligibility requirements for a higher position limit prior to the next six-month review. The Exchanges note further that, under current rules, an option that qualifies for a higher position limit before the next review period remains at the lower limit until the next semi-annual review is conducted. The Exchanges suggest that limiting an option which is qualified for a higher position limit to the lower limit can discourage market participation by institutions and other market participants with substantial hedging needs.

The Commission finds that the proposed rule changes are consistent with the Act and in particular the requirements of Section 6 and the Rules and Regulations thereunder. More specifically, the Commission believes that the proposed rule changes will help provide additional liquidity to certain options by increasing institutional and individual investor participation in the trading of those options without altering the existing position limit criteria. In addition, because options can be used to hedge existing stock portfolios, the Commission believes that acceleration of the date upon which a qualified option's increased position limit takes effect will provide investors with a useful tool to hedge more effectively underlying stock positions.

The Commission believes further that any increase in an option's position limit before a semi-annual review period will not result in investor confusion. The Exchanges specifically have indicated that they will provide their member firms with adequate notice of any increase so as to ensure the investment community is aware in advance of the changed position limit.[5]

Finally, the Commission believes that the proposed rule changes, along with the recently approved two-year pilot program permitting a position limit exemption for up to twice the existing position limit where equity option positions are hedged on a one-for-one basis with underlying stock,[6] will assist specialists and market makers in adequately meeting their obligations to maintain a fair and orderly market.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication in the **Federal Register** because the Commission recently approved a substantially identical proposal to provide greater flexibility in determining position limits for stock options submitted by the American Stock Exchange, Inc.[7] In addition, because the current position limit criteria for equity options have not changed, the Commission does not believe that the proposed rule changes raise any additional market disruption or manipulation concerns.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of each exchange's filing also will be available for inspection and copying at the principal office of the

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] *See* Securities Exchange Act Release No. 21907 (March 29, 1985), 50 FR 13440.

[4] For example, under current Phlx and CBOE rules, if during the first two months after a six-month review a stock with an options position limit of 5,500 contracts trades 40,000,000 shares, the position limit would remain at 5,500 contracts even through the option would qualify for an 8,000 contract limit at the next six-month review. The Exchanges' proposed rule changes would allow the Exchanges, at their discretion, to raise the limit to 8,000 contracts after the stock had reached the requirements for an 8,000 contract limit.

[5] In this regard, the Commission expects that the Exchanges will exercise judgment in determining whether to raise an option's limit so that the six-month review will remain as the review period for the overwhelming majority of options. For example, it would be more consistent with the Exchanges' discretion under the proposed rules for them to raise the limit for an option with a 5,500 limit if the underlying stock reaches the 40,000,000 share trading threshold two months before a six-month review than if it reached it one week before a six-month review.

[6] *See* Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201.

[7] *See* Securities Exchange Act Release No. 26092 (September 19, 1988), 53 FR 37073.

respective exchange. All submissions should refer to the file numbers in the caption above and should be submitted by November 25, 1988.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

Dated: October 31, 1988.

[FR Doc. 88-25585 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26226; File No. SR-MBS-88-15]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change

On September 1, 1988, the MBS Clearing Corporation ("MBSCC") filed a proposed rule change (File No. SR-MBS-88-15) with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1). The proposal would impose a schedule of penalties on MBSCC participants ("Participants") who fail to make timely payment of their debit balances. On October 26, 1988, MBSCC filed an amendment to the proposal to change the basis of the filing to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). The Commission is publishing this notice to solicit comments on the proposal and is granting accelerated temporary approval of the proposal as described below.

I. Description of the Proposal

The proposed rule change would impose a schedule of penalties on Participants in the MBSCC Depository Division ("Depository Division") who fail to make timely payment of their debit balances. First, if payment of a Participant's debit balance is received after the Depository Division's 4:15 p.m. (EST) cutoff time, under the proposal Participants would be charged one of the following penalties:

Amount of payment	Penalty
(1) $50,000 or less	$50.
(2) $50,001 to $150,000	100.
(3) $150,001 to $1,000,000.	250.
(4) more than $1,000,000.	250 or the amount equal to one day's interest at the rate of 1% per annum, whichever is greater.

Second, if as a result of a late payment or nonpayment of a Participant's debit balance, the Depository Division is required to borrow or advance funds to cover the debit balance, the Depository Division would charge, in addition to interest, but in lieu of the penalty specified above, a penalty equal to the greater of $500 or one day's interest at 250 basis points (2.5%).

II. MBSCC's Rationale for the Proposal

MBSCC states that the proposed penalties are consistent with section 17A of the Act in that they promote an accurate clearance and settlement of securities transactions among Participants and provide appropriate disciplinary action for violation of the provisions of the Depository Division rules.

III. Discussion

The proposed penalties are being adopted pursuant to Article II, Rule 5, section 3(d) and Article VI, Rule 3 of the Depository Division rules, which generally provide that MBSCC may assess Participants a fine for failure to make timely payment of their debit balances. The proposed penalties are subject to appeal under Article VI, Rule 7, section 1(c) of the Depository Division rules, and under Article VI, Rule 3, no penalty becomes effective until five days after notification of the imposition thereof. Penalties are automatically stayed during the pendency of any appeal.

The Commission believes that temporary approval of the proposed penalties is justified. The proposed penalties are adopted from Depository Division rules considered and discussed in the Commission order granting MBSCC temporary registration as a clearing agency.[1] The Depository Division rules provide Participants with an opportunity to appeal the assessment of the proposed penalty, allowing Participants to explain any mitigating circumstances. Finally, the Commission believes that the proposed penalty will encourage Participants to make timely payment of their debit balance and reduce risk of loss to MBSCC and its Participants. Therefore, the Commission believes it appropriate to temporarily approve the proposed rule change, effective September 1, 1988, until January 5, 1989.

IV. Request for Comments

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at MBSCC's principal office. All comments should refer to File No. SR-MBS-88-15 and should be submitted by November 25, 1988.

V. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MBS-88-15) be, and hereby is, temporarily approved effective nunc pro tunc September 1, 1988, until January 5, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 28, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25586 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

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[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1988).

[1] *See* Temporary Registration Order (Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[Rel. No. 34-26230; File No. SR-NASD-86-34]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Prompt Payment for Investment Company Shares

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on November 21, 1986 (and an amendment thereto on September 8, 1988), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to add a new paragraph to Article III, Section 26 of the NASD Rules of Fair Practice in order to establish time frames within which members must transmit payments for Investment Company shares to investment companies or their agents.

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26097, September 21, 1988) and by publication in the **Federal Register** (53 FR 37380, September 26, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–86–34, be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–(3a)(12).

Dated: October 31, 1988.

Johathan G. Katz,

Secretary.

[FR Doc. 88–25587 Filed 11–3–88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26229; File No. SR-NASD-88-38]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Minimum Number of Persons on Disciplinary Hearing Panels

The National Association of Securities Dealers, Inc. ("NASD") submitted on September 19, 1988, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder. The proposal amends Article II, Section 6 (a) and (b) of the NASD Code of Procedure to reduce the minimum number of persons on District Business Conduct Committee ("DBCC") and Market Surveillance Committee hearing panels from three to two persons and to reduce the number of persons required to be current DBCC members on DBCC hearing panels from two to one.

Notice of the proposed rule change together with the terms of substance of the proposed rule changes was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26112, September 26, 1988) and by publication in the **Federal Register** (53 FR 38397, September 30, 1988).

One comment letter was received on the proposed rule change.[1] The commentator argues that a minimum of three persons on the panels is necessary to achieve objective and impartial determinations and that if more panel members are needed, the pool of prospective panelists should be increased.

The Commission has reviewed carefully the arguments raised by the commentator, but has determined to approve the proposed rule change based on the NASD's assertion in the proposal that disciplinary cases have become more numerous and complex and have required significant time commitments on the part of DBCC and Market Surveillance Committee members. This has led to increasing difficulty in conducting hearings due to the unavailability of panel members. In addition, the Commission notes that under Article II, section 6(f) of the Code of Procedure, DBCC and Market Surveillance Committee hearing panels present recommended findings and sanctions to the full Committee, which makes the final determination by a majority vote. The Commission is satisfied that the proposed rule change is an appropriate response to a continuing problem in conducting disciplinary hearings.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

[1] Letter from William P. Spinks, Vice President, Consolidated Financial Investments, Inc., to Secretary, SEC (undated).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: October 31, 1988.

[FR Doc. 88–25588 Filed 11–3–88; 8:45 am]

BILLING CODE 8010-01-M

Senior Executive Service Performance Review Board, List of Members; Schedule of Bonus Awards

AGENCY: Securities and Exchange Commission.

ACTION: Listing of personnel serving as members of this agency's senior executive service performance review board and announcement of schedule for awarding bonuses.

SUMMARY: Pub. L. 95–454 dated October 13, 1978 (Civil Service Reform Act of 1978) requires that federal agencies publish notification of the appointment of individuals who serve as members of that agency's Performance Review Board (PRB). This notice announces the PRB membership and the schedule for awarding SES bonuses in the Commission. The Securities and Exhange Commission has established a Performance Review Board consisting of:

1. George Kundahl, Executive Director, PRB Chairman.

2. Daniel Goelzer, General Counsel.

3. Linda Fienberg, Executive Assistant to the Chairman.

The Securities and Exchange Commission plans to award bonuses to Senior Executive Service members on or about January 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. McConnell, Office of the Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004 (202) 272–2700.

Jonathan G. Katz,

Secretary.

October 31, 1988.

[FR Doc. 88–5589 Filed 11–3—88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16617; 812-6746]

Kidder, Peabody & Co. Incorporated, Kidder, Peabody Group Inc. and Webster Management Corp.; Application

November 1, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Extension of Time for Comment Based on Reports Filed Pursuant to Order of Temporary Exemption from the Provisions of section 9(a) of the Investment Company Act of 1940 ("1940 Act").

Applicants: Kidder, Peabody & Co. Incorporated ("Kidder"), Kidder, Peabody Group Inc. and Webster Management Corporation ("Webster") (collectively "Applicants").

Relevant 1940 Act Sections: Exemption requested from provisions of section 9(a) of the 1940 Act.

SUMMARY: The Commission is extending the time period during which interested persons may comment on Applicants' request under section 9(c) of the Investment Company Act of 1940 for a temporary and permanent order exempting Applicants from the provisions of section 9(a). The Commission issued a notice on October 6, 1988 (Investment Company Act Release No. 16589), giving interested persons until October 31, 1988, to comment on the application for a permanent section 9(c) order based on the information contained in certain reports filed pursuant to a temporary order issued on June 4, 1987 (Investment Company Act Release No. 15765) ("Temporary Order"). The Commission is extending the time period until November 25, 1988.

Filing Dates: The application was filed on June 4, 1987. The reports submitted pursuant to the Temporary Order were filed on January 29, 1988, and on June 3, 1988.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 20 Exchange Place, New York, N.Y. 10005.

FOR FURTHER INFORMATION CONTACT: Regina Hamilton, Staff Attorney, (202) 272–3024, or Karen L. Skidmore, Branch Chief, (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300). Copies of the filed reports are available for public inspection in the Commission's Public Reference Branch at its Headquarters Office in Washington, DC and its Regional Office in New York. For further information, refer to the Temporary Order

Extension of Time for Comment

Notice is hereby given that the Commission has extended the time period during which interested persons may comment on Applicants' request for a permanent section 9(c) order based on the information contained in the reports described in Investment Company Act Release No. 16589. Interested persons wishing to comment on the application based on information contained in the reports should file such comments with the Secretary of the SEC by 5:30 p.m., on November 25, 1988.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25630 Filed 11–3–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 28, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45895

Date Filed: October 25, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 22, 1988.

Description: Application of Canadian Airlines International Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to serve the Route Toronto-Chicago.

Docket No. 45901

Date Filed: October 28, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 25, 1988.

Description: Application of Holidair Airways Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations requests an initial foreign air carrier permit authorizing foreign charter air transportation of persons and their accompanied baggage, and property and mail between points in the United States and points in Canada.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88–25638 Filed 11–3–88; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Cir.; Public Debt Series—No. 27–88]

Treasury Notes, Series AG–1990

Washington, October 27, 1988.

The Secretary announced on October 26, 1988, that the interest rate on the notes designated Series AG–1990, described in Department Circular—Public Debt Series—No. 27–88 dated October 20, 1988, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–25542 Filed 11–3–88; 8:45 am]

BILLING CODE 4810–40–M

UNITED STATES INFORMATION AGENCY

Private Sector Annual Meeting

The Annual meeting of the USIA Private Sector Committees will be held on Thursday, November 17, 1988 from 10:30 a.m. to 12:30 p.m.

Location of the meeting will be in the Loy Henderson conference room at the Department of State.

Advisory committees represented at this session are: Book and Library, Radio Engineering, VOA Broadcast, Television Telecommunications, Medical Science.

Please contact Louise G. Wheeler on 202–485–8889 for further information.

Dated: November 1, 1988.

Louise G. Wheeler,

Director, Private Sector Committees.

[FR Doc. 25576 Filed 11–3–88; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 53, No. 214
Friday, November 4, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control

Correction

In the issue of Tuesday, November 1, 1988, on pages 44144 and 44145, in the correction to rule document 88-22541, a portion of the text was incorrect and is corrected as follows:

§ 773.5 [Corrected]

1. On page 44145, in paragraph 8, 2nd line, "§ 773.5(a)(1)" should read "§ 773.5(a)(2)".

2. On the same page in paragraph 9, in the 3rd line, "director or" should read "or director".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

Correction

In notice document 88-18917 beginning on page 32144 in the issue of Tuesday, August 23, 1988, make the following correction:

On page 32151, some paragraphs were printed out of order. Beginning in the first column with paragraph (k), and up to paragraph (j) in the third column, the text is correctly printed below.

(k) [Reserved]

(l) *Food Safety and Inspection Service.* (1)-(2) [Reserved]

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions for Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) [Reserved]

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) [Reserved]

(d) ***Bureau of the Census.*** **(1)** Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) indefinite employment for the duration of each decennial census for key employees located at the Master District offices (MDO) and Processing Offices (PO): *Provided,* That temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)-(h) [Reserved]

(i) *Office of the Under Secretary for International Trade.* (10 Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Season, and Bag Possession Limits for Certain Migratory Game Birds in the United States

Correction

In rule document 88-22121 beginning on page 37944 in the issue of Wednesday, September 28, 1988, make the following correction:

A column of text which should have appeared as the last column of figures on page 37953 inadvertently appeared as the first column of figures on page 37954. The text of pages 37953 and 37954 is correctly printed below.

Note: For a Fish and Wildlife Service correction to this document, see the Rules and Regulations section of this issue.

BILLING CODE 1505-01-D

Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Nov. 12-Jan. 20.	15(5)	15(5)
Geese:	Nov. 23-Jan. 31.	5	5
Limits include no more than:			
Canada or white-fronted		2	4
Snow (including blue) and brant		5	5
Arkansas			
Ducks	Nov. 26-Dec. 18 & Dec. 26-Jan. 1.	3	6
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Sept. 1-Nov. 9.	15(5)	30(5)
Geese:		5	10
Canada	Jan. 14-Jan. 29.	1	2
White-fronted	Nov. 26-Jan. 29.	2	4
Snow (including blue) and brant	Nov. 26-Jan. 29.	5	10
Illinois:			
Ducks:		3	6
North Zone (1)	Oct. 29-Nov. 27.		
Central Zone (1)	Nov. 5-Dec. 4.		
South Zone (1)	Nov. 11-Dec. 10.		
Coots	Same as for ducks	15	30
Geese(2)(3):		5	10
North Zone(1):			
Tri-County Zone(1)	Nov. 5-Dec. 24.	2	4
Remainder of North Zone	Oct. 29-Dec. 17.	2	4
Central Zone (1):			
Tri-County Zone(1)	Nov. 5-Dec. 24.	1	4
Remainder of Central Zone	Nov. 5-Dec. 24.	2	4
South Zone (1):			
Southern Illinois Quota Zone (Alexander, Jackson, Union, and Williamson Counties)	Nov. 21-Jan. 9.	2	4
Rend Lake Quota Zone (Franklin and Jefferson Counties)	Nov. 21-Jan. 9.	2	4
Remainder of South Zone	Nov. 21-Jan. 9.	2	4
Limits include no more than:			
Canada		2	3
White-fronted		2	4
Snow (including blue) and brant		5	10
Indiana			
Ducks:		3	6
North Zone (1)	Oct. 14-Oct. 16 & Nov. 4-Nov. 30.		
South Zone (1)	Oct. 22-Oct. 24 & Nov. 19-Dec. 15.		
Ohio River Zone (1)	Nov. 24-Nov. 27 & Dec. 10-Jan. 4.		
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Sept. 1-Nov. 9.	15(5)	30(5)
Geese:		5	10
Canada(3):		2	4
North Zone (1)	Oct. 14-Oct. 16 & Nov. 4-Jan. 9.		
South Zone (1):			
Posey County (3)	Dec. 13-Jan. 31.		
Remainder of South Zone	Oct. 22-Oct. 30 & Nov. 19-Jan. 18.		
Ohio River Zone(1):			
Posey County	Dec. 13-Jan. 31.		
Remainder of Ohio River Zone	Nov. 12-Jan. 20.		
Other Geese:			
North Zone(1)	Oct. 14-Oct. 16 & Nov. 4-Jan. 9.		
South Zone(1)	Oct. 22-Oct. 30 & Nov. 19-Jan. 18.		
Ohio River Zone(1)	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Iowa			
Ducks:		3	6
North Zone(1)	Oct. 8-Oct. 9 & Oct. 22-Nov. 18.		
South Zone(1)	Oct. 22-Oct. 28 & Nov. 5-Nov. 27.		
Coots	Same as for ducks	15	30
Geese:		5	10
Canada:		2	4
Southwest Zone (1)	Oct. 15-Nov. 28.		
Remainder of State	Oct. 1-Nov. 14.		
Other geese:			
Southwest Zone (1)	Oct. 15-Dec. 23.		
Remainder of State	Oct. 1-Dec. 9.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Kentucky			
Ducks	Nov. 24-Nov. 27 & Dec. 10-Jan. 4.	3	6
Pintails	Nov. 24-Nov. 27.	1	2
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Nov. 24-Jan. 20.	15(5)	30(5)
Geese(2):		5	10
Canada:		2	4
Western Zone (1)(3)	Dec. 10-Jan. 28.		
Remainder of State	Nov. 24-Jan. 31.		
Other geese	Nov. 24-Jan. 28.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Louisiana			
Ducks:		3	6
East Zone (1)	Nov. 19-Nov. 27 & Dec. 19-Jan. 8.		
West Zone (1)	Nov. 19-Dec. 4 & Dec. 26-Jan. 8.		
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Nov. 19-Jan. 20.	15(5)	30(5)
Geese:			
Canada	Closed.	-	-
Other Geese:		5	10
East Zone(1)	Nov. 19-Jan. 27.		
West Zone (1)	Nov. 19-Dec. 7 & Dec. 26-Feb. 14.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10

Michigan			
Ducks:		3	6
North Zone (1)	Oct. 8-Nov. 6.		
Middle Zone (1)	Oct. 8-Nov. 6.		
South Zone (1)	Oct. 15-Nov. 10 & Nov. 25-Nov. 27.		
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Same as for ducks	15(5)	30(5)
Geese:		5	10
Canada(3):			
North Zone (1):			
Superior Counties Goose Management Area (1)	Sept. 26-Nov. 4	2	4
Remainder of North Zone	Sept. 26-Nov. 4.	2	4
Middle Zone (1)	Oct. 8-Nov. 16.	2	4
South Zone (1):			
Allegan County Goose Management Area(1)	Oct. 15-Nov. 27.	1	2
Muskegon Wastewater Goose Management Area (1)	Oct. 15-Nov. 13 & Dec. 1-Dec. 13.	2	4
Saginaw County Goose Management Area (1)	Oct. 1-Nov. 13 & Nov. 25-Nov. 27.	2	4
Fish Point Goose Management Area(1)	Oct. 1-Nov. 13 & Nov. 25-Nov. 27.	2	4
Southern Michigan Goose Management Area(1)	Oct. 25-Nov. 13 & Nov. 25-Dec. 14 & Jan 7-Feb. 5	2	4
Remainder of South Zone	Oct. 15-Nov. 13 & Nov. 25-Dec. 4.	2	4
Other geese: (Seasons are concurrent with Canada goose seasons except in the Southern Michigan Goose Management Area, where the Jan. 7- to Feb. 5 special season is for Canada geese only). Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Minnesota			
Ducks:	Oct. 8-Nov. 6.	3	6
Limits include no more than:			
Mallards (no more than 1 female mallard daily or 2 in possession)		2	4
Pintails	Oct. 8-Oct. 14.	1	2
Black ducks		1	2
Wood ducks		2	4
Redheads		1	2
Pintails	Oct. 8-Oct. 14.	1	2
Mergansers (no more than 1 hooded merganser daily or 2 in possession)		5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Oct. 8-Nov. 6.	15(5)	30(5)

Geese:		5	10
Canada:			
West Central Zone(1)			
Lac qui Parle Zone(1)(3)	Oct. 8-Nov. 6.	1	2
Remainder of West Central Zone	Oct. 8-Nov. 6.	1	2
Southeastern Zone (1):			
Metro Goose Management Block(1) and Olmsted County	Oct. 1-Dec. 9 & Dec. 16-Dec. 25.	2	4
Remainder of Southeastern Zone	Oct. 1-Dec. 9.	2	4
Remainder of State	Oct. 1-Nov. 9.	1	2
Other geese:			
West Central Zone(1)	Oct. 8-Nov. 6.		
Southeastern Zone(1)	Oct. 1-Dec. 91.		
Remainder of State	Oct. 1-Nov. 9.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Mississippi			
Ducks	Dec. 10-Jan. 8.	3	6
Coots	Same as for ducks.	15	30
Gallinules/Moorhens(4)	Oct. 15-Dec. 23.	15(5)	30(5)
Geese:		5	10
Canada:		1	2
Sardis Zone (1)	Dec. 5-Dec. 14 & Jan. 12-Jan. 31.		
Remainder of State	Jan. 17-Jan. 31.		
Other geese	Nov. 23-Jan. 31.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Missouri			
Ducks:		3	6
North Zone (1)	Nov. 5-Dec. 4.		
South Zone (1)	Nov. 19-Dec 4 & Dec. 26-Jan. 8.		
Mergansers (except hooded)	Same as for ducks.	3	6
Hooded mergansers	Same as for ducks.	1	2
Coots	Same as for ducks.	15	30
Geese(2):		5	10
Canada:			
North Zone (1):			
Swan Lake Zone (1) (3)	Nov. 5-Nov. 14 & Nov. 25-Dec. 24.	2	4
Southeast Zone(1)	Dec. 4-Jan. 22.	2	4
Remainder of North Zone	Nov. 5-Nov. 14 & Nov. 25-Dec. 24.	1	2
South Zone (1):			
Southeast Zone (1)	Dec. 4-Jan. 22.	2	4
Remainder of South Zone	Nov. 19-Dec. 4 & Dec. 26-Jan. 18.	1	2
Other geese:			
North Zone(1):			
Southeast Zone	Nov. 14-Jan. 22.		
Remainder of North Zone	Nov. 5-Jan. 13.		
South Zone(1)	Nov. 14-Jan. 22.		
Limits include no more than:			
White-fronted		2	4

federal register

Friday
November 4, 1988

Part II

Office of Management and Budget

Grants and Cooperative Agreements; Proposed Revision of Circulars A-102 and A-110; Notice

OFFICE OF MANAGEMENT AND BUDGET

Grants and Cooperative Agreements

AGENCY: Office of Management and Budget.

ACTION: Proposed Revision of Circulars A–102 and A–110.

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed circular that would replace Office of Management and Budget Circulars A–102, "Grants and Cooperative Agreements with State and Local Governments," dated March 3, 1988, and A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," dated July 1, 1976. The proposed circular contains guidance to the Federal agencies on grants management issues which are internal to the Federal agencies. Elsewhere in this issue of the **Federal Register**, Federal agencies are proposing a common regulation, "Uniform Administrative Requirements for Grants and Cooperative Agreements," which contains fiscal and administrative requirements for grantees.

DATES: Comments must be received on or before January 3, 1989.

ADDRESS: Comments should be submitted to the Financial Management Division, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jonathan Breul, Financial Management Division, Office of Management and Budget, Washington, DC 20503. (202) 395–3050.

SUPPLEMENTARY INFORMATION: An interagency task force under the President's Council on Management Improvement (PCMI) was established to review existing guidance for managing Federal aid programs. On June 18, 1984, OMB published a Notice in the **Federal Register** (49 FR 24958) announcing the review and seeking public comment on over 50 issues and possible options for each. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress submitted several hundred comments.

Five agency-chaired teams developed two products: a revised OMB Circular A–102—addressed solely to Federal agencies, and a government-wide "common rule"—addressed to State and local grantees. The proposed government-wide common rule stated the fiscal and administrative conditions governing grants to State and local governments and subgrantees which are State and local governments.

On March 12, 1987, the President directed OMB to revise Circular A–102 and all affected Federal agencies to simultaneously propose a common rule to adopt verbatim government-wide grants management terms and conditions. OMB published a proposed revision to Circular A–102 as a Notice in the June 9, 1987 **Federal Register** (52 FR 21816–21818). Simultaneously, in the same issue (52 FR 21820–21852), Federal grant-making agencies proposed a common rule. On March 11, 1988, OMB published the final revised Circular A–102, dated March 3, 1988, in the **Federal Register**, (53 FR 8027–8032). Twenty-four agencies published the final government-wide common rule on the same day (53 FR 8033–8103).

As indicated in the President's Fiscal Year 1989 *Management Report*, the PCMI asked OMB and HHS to co-chair a similar effort to review and issue a common rule and revised circular to conform the grants management requirements for non-governmental grantees, now covered by OMB Circular A–110. OMB issued a Notice in the **Federal Register** on June 24, 1987 announcing this plan and soliciting public suggestions on issues important to business-like management of Federal assistance to universities, hospitals and other nonprofit organizations.

Historically, the differences between Circulars A–102 and A–110 have been few and largely insignificant. In recognition of this, the six departments and agencies (the Departments of Agriculture, Education, Energy, Health and Human Services and Labor and the Environmental Protection Agency), which implemented the two circulars in departmental or agency-wide rules, each did so in a common rule. Since these agencies account for a majority of grantees and grant programs, essentially agencies have been applying a single rule to both governmental and non-governmental grantees for some time.

Three agency-chaired teams were formed to look at: (1) The "differences" between the Circulars A–102 and A–110, (2) "new issues" not presently covered in either circular, and (3) "basic research." Based on a review of the comments to the July 24, 1987 Notice, the existing circulars, and agency implementing rules, the teams drafted amendments to the March 11, 1988 common rule to expand its applicability to non-governmental grantees and make other changes necessary to make it suitable for non-governmental grantees as well as governmental grantees. The proposed amendments to the common rule are published elsewhere in this issue of the **Federal Register**.

Proposed OMB Circular

This Notice presents a proposed, revised OMB Circular to replace Circular A–110, containing guidance to the Federal agencies on those matters not covered in the government-wide grants management common rule. The uniform administrative requirements previously found in Attachments "A–O" of Circular A–110 are now contained in the agencies' proposed common rule. What remains in the revised circular is OMB guidance addressed solely to the Federal agencies on those remaining grants management issues which are internal to the Federal agencies.

Inasmuch as the guidance in the revised Circular is virtually identical to that in the March 3, 1988 revision to Circular A–102, OMB is proposing to combine the two circulars into a single new circular under a new number. The new circular will help distinguish it from the old A–102 and A–110 and be used alongside the agencies' single, government-wide grants management common rule.

Summary of Proposed Changes

The proposed new OMB Circular is based almost entirely upon Circular A–102 issued March 3, 1988 for grants to State, local and Indian tribal governments. The proposed circular departs from Circular A–102 in several significant ways:

1. Universities, Hospitals and Other Non-Profit Organizations

The proposed Circular expands the applicability of the OMB guidance to cover grants to institutions of higher education (i.e., public and private colleges and universities), hospitals, and other non-profit organizations, now covered under OMB Circular A–110.

This expansion means that when awarding or administering grants to these grantees, as well as governmental grantees, Federal agencies will be subject, with one exception, to the same OMB guidance on pre-award, post-award and after-the-grant matters as finalized in the March 3, 1988 Circular A–102. The one exception concerns use of the government-wide standard application forms (SF–424). By its own terms, Circular A–102 requires agencies to use the SF–424 *only for governmental grantees*. The proposed revision continues to require Federal agencies to use the standard application form *only* for applicants which are State, local and Indian tribal governments. The proposed guidance permits Federal agencies to

use those forms or develop their own forms and instructions for non-governmental applicants. However, all forms and isntructions are subject to OMB approval under the Paperwork Reduction Act of 1980.

2. Commercial (For-Profit) Organizations

For the first time, an OMB circular would provide guidance on the award and administration of grants to commercial (for-profit) organizations. This proposed change parallels a similar proposal by the agencies in the common rule. Both the proposed OMB Circular and the agencies' proposed common rule would expand the applicability of the fiscal and administrative requirements for grants to cover commercial (for-profit) organizations as well as governmental and non-governmental organizations previously covered by Circulars A–102 and A–110.

3. Special Provisions for Research

The proposed circular would provide guidance to the Federal agencies on circumstances in which they should use the special provisions for research proposed as Subpart F in the common rule. Subpart F is a set of simplified administrative requirements which the agencies are proposing as a result of the "Florida Demonstration Project."

In March 1986, five agencies began the Florida Demonstration Project to test ways to increase research productivity and reduce overhead costs on sponsored research. In March 1988, the Presidential Task Force on Regulatory Relief approved expansion of the project to include research contracts as well as grants and to include universities and research facilities outside of Florida. At the same time, the Interagency Assessment Committee, composed of the senior policy officials of the participating agencies, recommended immediate implementation of the most successful subset of the Demonstration procedures. On May 18, 1988, OMB issued Memorandum M–88–20 authorizing Federal agencies to make routine use of the simplified provisions.

Since most of these provisions require a waiver of provisions of the common rule, the agencies are proposing a new Subpart F to permit routine application of the simplified provisions. The proposed OMB Circular encourages use of these provisions and provides guidance on the circumstance which are appropriate for their use.

4. Miscellaneous

Paragraph 7h., *Pre-screening for Delinquent Federal Debt* and paragraph 8g., *Administrative Offset* reflect credit management policies in OMB Circular A–129, "Managing Federal Credit Programs." The former establishes prescreening procedures for determining the financial responsibility of grantees; the latter concerns use of administrative offset to collect delinquent debt owed to the Federal Government.

[Circular No. A–xxx]

To the Heads of Executive Departments and Establishments

Subject: Grants and Cooperative Agreements

1. *Purpose.* This Circular establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with governmental and non-governmental organizations. This revision supersedes Office of Management and Budget (OMB) Circulars No. A–102, "Grants and Cooperative Agreements with State and Local Governments," dated March 3, 1988, and Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," dated July 1, 1976.

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order 11541. Also included in the Circular are standards to ensure consistent implementation of: sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968; the Office of Federal Procurement Policy Act Amendments of 1983; sections 6301–08, title 31, United States Code; and, the Federal Claims Collection Standards, 4 CFR 102.3 and 102.4.

3. *Background.* On March 12, 1987, the President directed all affected agencies to issue a grants management common rule to adopt government-wide terms and conditions for grants to State and local governments. On March 3, 1988, OMB issued a revised Circular A–102 providing guidance to Federal agencies on business-like management of grant programs to State and local governments and other matters not covered in the common rule. The revision replaced and rescinded Circular A–102, dated January 1981, including Attachments "A"–"P".

The President's Council on Management Improvement directed a similar revision of Circular A–110. Inasmuch as the requirements of A–110 are essentially the same as A–102, this revision combines the two virtually identical requirements into one circular. Accordingly, this revision also replaces and rescinds Circular A–110, dated July 1, 1976, including Attachments "A"–"O".

4. *Coverage.* To the extent permitted by law, all Federal agencies administering programs that involve grants and cooperative agreements with governmental and non-governmental organizations shall follow the policies in this Circular and simultaneously issue a common grants management rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements" (common rule). If the enabling legislation for a specific grant program prescribes policies or requirements that differ from those in this Circular, the provisions of the enabling legislation shall govern.

5. *Definitions.*

a. "Government" means a State or local government or a federally recognized Indian tribal government.

b. "Grant" means an award of Federal financial assistance, including cooperative agreements, in the form of money, or property in lieu of money. The term does not include technical assistance which provides services instead of money or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations.

c. "Non-governmental organization" means a public or private institution of higher education, a public or private hospital, an Indian tribe or an Indian tribal organization which is not a federally-recognized Indian tribal government, a quasi-public or private non-profit organization, or a commercial organization. The term does not include an individual, Federal agency, foreign or international organization (such as an agency of the United Nations), Government-owned contractor operated facility, or research center providing continued support for mission oriented large scale programs that are Government-owned or controlled or are developed as a federally-funded Research and Development Center under Office of Federal Procurement Policy letter 84–1.

6. *Deviations.* The Office of Management and Budget may grant deviations from the requirements of this Circular when permissible under existing law. However, in the interest of uniformity and consistency, deviations will be permitted only in exceptional circumstances.

7. *Pre-Award Policies.*

a. *Use of grants and cooperative agreements.* Sections 6301–08, title 31, United States Code govern the use of grants, contracts and cooperative agreements. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support

or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is excepted between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreements."

b. *Advance Public Notice and Priority Setting.*

(1) Federal agencies shall provide the public with an advance notice in the Federal Register, or by other appropriate means, of intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute. These priorities shall be approved by a policy level official.

(2) Whenever time permits, agencies should provide the public an opportunity to comment on intended funding priorities.

(3) All discretionary grants in excess of $25,000 shall be reviewed for consistency with agency priorities by an agency policy level official.

c. *Application Forms.*

(1) For applicants which are nongovernmental organizations, agencies may use the standard application forms described below or shall develop and use forms and instructions, subject to OMB clearance under the Paperwork Reduction Act (44 U.S.C. 35) and 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public."

(2) For applicants which are governments, agencies shall use the following standard forms and follow the instructions in paragraphs (3)– (7), unless they obtain OMB approval under the Paperwork Reduction Act of 1980:

- SF–424 Facesheet
- SF–424A Budget Information (Non-Construction)
- SF–424B Standard Assurances (Non-Construction)
- SF–424C Budget Information (Construction)
- SF–424D Standard Assurances (Construction)

When different or additional information is needed to comply with legislative requirements or to meet specific program needs, agencies shall also obtain prior OMB approval.

(3) A preapplication shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds $100,000, unless the Federal agency determines that a preapplication is not needed. A preapplication is used to:

(a) Establish communication between the agency and the applicant,

(b) Determine the applicant's eligibility,

(c) Determine how well the project can compete with similar projects from others, and

(d) Discourage any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications.

(4) Agencies shall use the SF–424C, Budget Information (Construction), and SF–424D, Standard Assurances (Construction), when the major purpose of the project or program is construction, land acquisition or land development.

(5) Agencies may specify how and whether budgets shall be shown by functions or activities within the program or project.

(6) Agencies should generally include a request for a program narrative statement which is based on the following instructions:

(a) Objectives and need for assistance. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

(b) Results or benefits expected. Identify results and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public.

(c) Approach. Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

(d) Geographic Location. Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

(e) If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance. Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.

(7) All application forms must include one of the following:

(a) A question to be answered "yes" or "no" asking either "Are you delinquent on any Federal debt?" or "Is the applicant delinquent on any Federal debt?" Where the answer is "yes," the applicant is to provide explanatory information.

(b) A certification statement to be signed by the applicant stating either "I certify that I am not delinquent on any Federal debt" or "This institution certifies that it is not delinquent on any Federal debt."

(8) Generally, the certification statements in (7)(b) will be used only

where the agency has determined, in accordance with applicable procedures, that grant funds will not be awarded to delinquent applicants, regardless of circumstances. In most cases agencies will use the yes/no question to enable grantees to provide the Federal agency information regarding the circumstances surrounding the delinquency. When incorporating either provision (7)(a) or (b), agencies shall add instructions that include examples of debt relevant to the institutions or individual applying for a grant. Examples include delinquent taxes, audit disallowances, guaranteed and direct student loans, housing loans, benefit overpayments or other miscellaneous administrative debts.

(9) Additional assurances shall not be added to those contained on the SF–424B and SF–424D, unless specifically required by statute.

d. *Debarment and Suspension.* Federal agencies shall not award grants in violation of agency regulations implementing Executive Order 12549, "Debarment and Suspension."

e. *Awards and Adjustments.*

(1) Ordinarily grants shall be made at least ten days prior to the beginning of the grant period.

(2) Agencies shall notify grantees immediately of any anticipated adjustments in the amount of a grant. This notice shall be provided as early as possible in the funding period. Reductions in funding shall apply only to periods after notice is provided. Whenever an agency adjusts the amount of a grant, it shall also make an appropriate adjustment to the amount of any required matching or cost sharing.

f. *Carryover Balances.* Agencies shall be prepared to identify to OMB the amounts of carryover balances (e.g., the amounts of estimated, grantee unobligated balances available for carryover into subsequent grant periods). This presentation shall detail the fiscal and programmatic (level of effort) impact in the following period.

g. *Special Terms and Conditions for Research and Other Programs.*

(1) Subpart F of the common rule recognizes the special nature of Federal support of scientific research and other programs where it is desirable to rely upon grantee authority and responsibility for management of projects.

(2) Agencies are strongly encouraged to apply the special terms and conditions in Subpart F of the common rule to research grants when the following conditions are met:

(a) The grantee has administrative and financial systems that meet the standards in the common rule,

(b) The grantee does not meet the definition of "high risk" in §——.12 of the common rule,

(c) The research is primarily at the direction of the project director or principal investigator and does not ordinarily require significant agency post-award programmatic or administrative oversight.

(d) The requirements of §——.30 of the common rule provide the agency sufficient project monitoring and control.

(3) When the special terms and conditions in Subpart F are applied, they should be applied in their entirety.

(4) Agencies may elect to apply the terms and conditions in Subpart F to other programs when the grantee meets the conditions in (g)(2) above.

(5) Agencies are encouraged to indicate in program announcements whether or not these conditions may apply.

h. *Pre-screening for Delinquent Federal Debt.*

(1) Consistent with the Privacy Act, agencies shall obtain taxpayer identification numbers (TIN) or Employer Identification Numbers (EIN), as appropriate, from all applicants for grants.

(2) Agencies shall have technically trained staff pre-screen applicants for grants for financial responsibility in accordance with the standards in Circular A–129.

(3) Subject to the following conditions, agencies shall obtain and use credit reports to determine the extent and status of financial dealings between applicants and the Federal Government.

(a) State and local governments: agencies are not required to obtain credit reports on state and local governments.

(b) New grantees: agencies shall obtain credit reports before awarding grants to organizations other than State and local governments. In order to minimize costs, agencies may obtain credit reports after selection but before actual award.

(c) Existing grantees: In those cases where agencies have prior or ongoing relationships with grantees, agencies shall obtain credit reports annually.

(4) Where applications, proposals, credit reports, or other pre-screening information disclose that an applicant is delinquent on debt to the Federal Government, the agency shall:

(a) Take such information into account when determining whether the prospective grantee is responsible with respect to that grant, and

(b) Consider not awarding the grant until payment is made or satisfactory arrangements are made with the agency to which the debt is owed.

i. *Special Conditions or Restrictions.* Agencies may impose special conditions or restrictions on awards to "high risk" grantees in accordance with §——.12 of the common rule. Agencies shall document use of the "Exception" provisions of §——.6 and "High-risk" provisions of §——.12 of the common rule.

j. *Waiver of Single State Agency Requirements.*

(1) Requests to agencies from the Governors, or other duly constituted State authorities, for waiver of "single" State agency requirements in accordance with section 6504, title 31, United States Code, shall be given expeditious handling and, whenever possible, an affirmative response.

(2) When it is necessary to refuse a request for waiver of "single" State agency requirements, the Federal grantor agency shall advise the Office of Management and Budget prior to informing the State that the request cannot be granted. The agency shall indicate to OMB the reasons for the denial of the request.

(3) Legislative proposals embracing grant-in-aid programs shall avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing requirements in present grant-in-aid programs shall be reviewed and legislative proposals developed for the removal of these restrictive provisions.

k. *Patent Rights.* Agencies shall use the standard patent rights clause specified in "Rights to Inventions made by Nonprofit Organizations and Small Business Firms" (37 CFR Part 401), when providing support for research and development.

8. *Post-award Policies.*

a. *Cash Management.* Agency methods and procedures for transferring grant funds shall minimize the time elapsing between the transfer of cash to a grantee and the grantee's need for the funds.

(1) Such transfers shall be made consistent with program purpose, applicable law and Treasury regulations at 31 CFR Part 205.

(2) Where letters-of-credit are used to provide funds, they shall initially be in the same amount as the grant or the projected cash needs for the year. However, agencies are not precluded from adjusting this amount to collect claims, implement sanctions and carry out program purposes consistent with law and regulations.

b. *Grantee Financial Management Systems.* In assessing the adequacy of

an applicant's financial management system, the Federal agency shall rely on readily available sources of information such as audit reports to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

c. *Financial Status Reports.*

(1) Federal agencies shall require grantees to use the SF–269, Financial Status Report-Long Form, or SF–269A, Financial Status Report-Short Form, to report the status of funds for all non-construction projects or programs. Federal agencies need not require the Financial Status Report when the SF–270, Request for Advance or Reimbursement, of SF–272, Report of Federal Cash Transactions, is determined to provide adequate information.

(2) Federal agencies shall not require grantees to report on the status of funds by object class category of expenditure (e.g., personnel, travel, equipment).

(3) If reporting on the status of funds by programs, functions or activities within the project or program is required by statute or regulation, Federal agencies shall instruct grantees to use block 12, Remarks, on the SF–269 or a supplementary form approved by the OMB under the Paperwork Reduction Act of 1980.

(4) Federal agencies shall prescribe whether the reporting shall be on a cash or an accrual basis. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on an accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

d. *Contracting With Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms.* It is national policy to award a fair share of contracts to small and minority business firms. Grantees shall take similar appropriate affirmative action to support of women's enterprises and are encouraged to procure goods and services from labor surplus areas.

e. *Program Income.*

(1) Agencies shall encourage grantees to generate program income to help defray program costs. However, Federal agencies shall not permit grantees to use grant-acquired equipment to compete unfairly with the private sector.

(2) Federal agencies shall instruct grantees to deduct program income from total program costs as specified in the common rule at paragraph ____ .25(g)(1), unless agency regulations or the terms of the grant award state otherwise. Authorization for grantees to follow the other alternatives in paragraph ____ .25(g) (2) and (3) shall be granted sparingly.

f. *Site Visits and Technical Assistance.* Agencies shall conduct site visits only as warranted by program or project needs. Technical assistance site visits shall be provided only: (1) In response to requests from grantees, (2) based on demonstrated program need, or (3) when grantees are designated "high risk" under under § ____ .12 of the common rule.

g. *Administrative Offset.* Agencies may employ administrative offset to recover delinquent debt from grantees (including State and local governments) in accordance with the Federal Claims Collection Standards, 4 CFR 102.3 and 102.4.

(1) Agencies are not required to use offset in every instance in which there is an available source of funds, but shall make case-by-case determinations whether offset is appropriate.

(2) Recovery of debt by administrative offset shall not be used where offset will substantially interfere with, or defeat the purpose of, the program for which offset is contemplated.

(3) Grants which are paid in advance (e.g., payment is made in advance of performance or before costs are incurred) shall not be subject to offset. However, if it is in the best interest of the Federal Government, agencies shall consider converting the method of payment to a reimbursement basis to enable use of administrative offset.

9. *After-the-grant Policies.*

a. *Closeout.* Federal agencies shall notify grantees in writing before the end of the grant period of final reports that shall be due, the dates by which they must be received, and where they must be submitted. Copies of any required forms and instructions for their completion shall be included with this notification. The Federal actions that must precede closeout are:

(1) Receipt of all required reports,

(2) Disposition or recovery of federally-owned assets, and

(3) Adjustment of the award amount and the amount of Federal cash paid the grantee.

b. *Annual Reconciliation of Continuing Grants.* Federal agencies shall reconcile continuing grants at least annually and evaluate program performance and financial reports. Items to be reviewed include:

(1) A comparison of the grantee's work plan to its progress reports and project outputs,

(2) The Financial Status Report (SF–269),

(3) Request(s) for payment,

(4) Compliance with any matching, level of effort or maintenance of effort requirement, and

(5) A review of federally-owned property (as distinct from property acquired under the grant).

10. *Entitlements* [Reserved].

11. *Policy Review (Sunset).*

The Circular will have a policy review three years from the date of issuance.

12. *Judicial Review.*

This Circular is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

13. *Effective Date.*

The Circular is effective on [effective date of common rule].

14. *Inquiries.* Further information concerning this Circular may be obtained from: Financial Management Division, New Executive Office Building, Room 10225, Office of Management and Budget, Washington, DC 20503, (202) 395–3050.

Joseph R. Wright, Jr.,

Acting Director.

[FR Doc. 88–25361 Filed 11–3–88; 8:45 am]

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Federal Register

Friday
November 4, 1988

Part III

Uniform Administrative Requirements for Grants and Cooperative Agreements; Notice of Proposed Rulemaking

DEPARTMENT OF AGRICULTURE

7 CFR PARTS 3015 AND 3016

DEPARTMENT OF ENERGY

10 CFR PART 600

SMALL BUSINESS ADMINISTRATION

13 CFR PART 143

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1270

DEPARTMENT OF COMMERCE

15 CFR PART 24

DEPARTMENT OF STATE

22 CFR PART 135

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR PART 226

UNITED STATES INFORMATION AGENCY

22 CFR PART 518

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PART 85

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR PART 601

DEPARTMENT OF JUSTICE

28 CFR PART 66

DEPARTMENT OF LABOR

29 CFR PART 97

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR PART 1470

DEPARTMENT OF DEFENSE

32 CFR PART 279

DEPARTMENT OF EDUCATION

34 CFR PARTS 74 AND 80

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR PARTS 1206 AND 1207

VETERANS ADMINISTRATION

38 CFR PART 43

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 30 AND 33

DEPARTMENT OF THE INTERIOR

43 CFR PART 12

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 13

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PARTS 74 AND 92

NATIONAL SCIENCE FOUNDATION

45 CFR PART 603

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

45 CFR PART 1157

National Endowment for the Humanities

45 CFR PART 1174

Institute of Museum Services

45 CFR PART 1184

ACTION

45 CFR PART 1234

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR PART 2015

DEPARTMENT OF TRANSPORTATION

49 CFR PART 18

Uniform Administrative Requirements for Grants and Cooperative Agreements

AGENCY: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, ACTION, Agency for International Development, Commission on the Bicentennial of the United States Constitution, Environmental Protection Agency, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, Institute of Museum Services, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Small Business Administration, United States Information Agency, Veterans Administration.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This action proposes a common rule updating and replacing agencies' implementation of OMB Circular A–110 with a single, government-wide common rule establishing consistency and uniformity among the Federal agencies shown above in the administration of grants and cooperative agreements to institutions of higher education, hospitals, other nonprofit organizations, and commercial or for-profit entities. This result is achieved by amending the common rule for governmental grantees issued by agencies on March 11, 1988. The provisions of the common proposed, amended rule are largely drawn from the existing departmental rules issued by the several agencies which in the past developed a single, comprehensive rule implementing both Circulars A–102 and A–110. This proposed common rule contains fiscal and administrative requirements applicable to all types of grantees. Elsewhere in this issue of the **Federal Register**, the Office of Management and Budget (OMB) is proposing a revision to Circulars A–102 and A–110—addressed solely to Federal agencies—containing guidance on how they manage the award and administration of all types of grants and cooperative agreements.

DATES: To be assured of consideration, comments on these proposed rules must be in writing and must be received on or before January 3, 1989. Comments should refer to specific sections in this regulation.

ADDRESS: Send comments to Gary Houseknecht, Acting Director, Division of Assistance and Cost Policy, Department of Health and Human Services, A–110 rulemaking docket, Room 513D Hubert H. Humphrey Building, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For issues regarding the common rule contact Gary Houseknecht (202) 245–7565. For issues regarding agency-specific amendments to the common rule, see contact persons for individual agencies, below.

SUPPLEMENTARY INFORMATION:

Background

Office of Management and Budget Circular A–102, "Uniform Administrative Requirements for Grants to State and Local Governments," was

originally issued in 1971. OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," was issued in 1976. Each established standards for consistency and uniformity among Federal agencies in the administration of grant and cooperative agreements. Each contained "attachments" which covered topics such as cash depositories, bonding and insurance, financial reporting, payment, matching, property and procurement.

After 12–17 years of experience with the circulars, the public, agencies and OMB recognized that while the basic policies and standards established for accountability of grant funds had worked well:

- Some provisions of A–102 and A–110 were "out-of-date," e.g., dollar thresholds for defining equipment are too low;
- A–102 and A–110 needed to be "more readable"—they contained a series of 16 attachments addressed to both grantors and grantees. Many persons suggested reorganizing the policies to reflect the grants management process (pre-award, post-award, after-the-grant) and sort out the roles about who does what to whom, in any particular circumstance;
- There were "gaps" in A–102 and A–110 in some additional important areas where government-wide standardization makes sense, e.g., screening out suspended and debarred organizations and more guidance on prompt closeout;
- Some policies may have needed clarification, e.g., the program income rule, and whether and how the rules apply to subgrantees (known as the "flow-down" policy);
- A–102 and A–110 should be implemented in regulations as a condition of all grants, as OMB Circulars A–102 and A–110 are not codified in the Code of Federal Regulations; and
- Finally, the uniformity A–102 and A–110 originally sought to achieve was undercut to some extent by the many and various agency implementing regulations and noncodified manuals, handbooks, etc. Six agencies have adopted the circulars in departmental regulations (Departments of Agriculture, Education, Energy, Health and Human Services, and Labor, and the Environmental Protection Agency). Three others did so partly or fully in program regulations (Departments of Housing and Urban Development and Interior and the Federal Emergency Management Agency). Others used binding terms and conditions or noncodified manuals and handbooks for all or part of the circulars. Only one agency issued any part of the circulars verbatim in regulations. Many restated parts of the circulars, others modified them, while others cross-referenced parts of them. Most did some combination of all of these approaches.

In November 1983, a 20-agency task force under the President's Council on Management Improvement (PCMI), chaired by the Office of Management and Budget, was established to explore streamlining grants management and to review OMB Circular A–102, "Uniform Administrative Requirements for Grants to State and Local Governments."

On June 18, 1984, OMB published a Notice in the Federal Register (49 FR 24958–59) seeking comments on over 50 issues and possible options for each issue. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress, submitted several hundred comments.

Five agency-chaired teams studied the comments, existing Federal agency grants administrative regulations, and noncodified manuals and handbooks implementing OBM Circular A–102 to draft a government-wide "common" rule. The proposed common rule contained fiscal and administrative requirements for grants to State and local governments (grantees) and subrecipients that are State and local governments (subgrantees). At the same time, OMB and the agencies prepared a revised Circular A–102—directed solely to Federal agencies—containing guidance to Federal agencies on how they should manage the award and administration of Federal grants.

On March 12, 1987, the President directed all affected Federal agencies to simultaneously propose and subsequently adopt a verbatim common rule, except where inconsistent with statutory requirements. The President explained that at the time it was issued "Circular A–102 was a significant step toward simplification of grants management." He went on to say, however, that "after 16 years, some of the provisions are out of date, there are gaps where the standards do not cover important areas, and agencies have interpreted the Circular in numerous different ways in their regulations. It is now time for the Circular to be revised to reflect developments consistent with our Federalism policies and State and local regulatory relief objectives and the President's Management Improvement Program."

The agencies proposed a government-wide common rule in the June 9, 1987 Federal Register (52 FR 21820–62). In the same issue, OMB proposed a revised Circular A–102 (52 FR 21816–18). On March 11, 1988, the Federal agencies published the final common rule in the Federal Register (53 FR 8033–8103) with an effective date of October 1, 1988. The final revision to Circular A–102 appeared in the same issue (53 FR 8027–32).

OMB Circular A–110 Review

In 1987, the PCMI directed that the Department of Health and Human Services (HHS) and OMB jointly chair a follow-on effort to review and issue a common rule and revised circular for nongovernmental grantees covered by Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." In addition, the President's FY 1989 *Management Report* indicated that "In 1988, the agencies will propose amendments to the common rule to adopt cost savings and management improvements for grants and cooperative agreements with the remaining universities, hospitals and nonprofit organizations, now covered by OMB Circular A–110. A final common rule for these nongovernmental grantees will be issued in early 1989." Consequently, OMB and HHS co-chaired an interagency task force which reviewed the current requirements of Circular A–110, compared them with the March 11, 1988 common rule, and considered the need for change to restore uniformity.

Three agency-chaired teams looked at: "Differences" between A–102 and A–110 grantees (chaired by Environmental Protection Agency), "New Issues" that needed to be addressed (chaired by National Science Foundation), and "Basic Research" (chaired by National Institutes of Health). Each team drafted preamble language and regulatory provisions to amend the March 11, 1988 common rule to extend its applicability and make other necessary changes to cover nongovernmental organizations.

Proposed Common Rule

The proposed common rule, which follows, and a proposed revised OMB Circular, published elsewhere in this issue, reflect the result of these efforts. The OMB Circular is addressed solely to Federal agencies, providing OMB guidance on internal grants management practices of the agencies. The proposed common rule, on the other hand, is addressed to governmental and nongovernmental organizations that receive Federal grants or cooperative agreements. The proposed common rule prescribes the government-wide fiscal

and administraive conditions governing grants to these organizations.

The proposed common rule will be codified in each agency's portion of the Code of Federal Regulations, as indicated in the information provided for individual agencies below. Several agencies' rules reflect differences required by statute (e.g., the five-year record retention requirement for Department of Education programs under the General Education Provisions Act). Such differences are indicated in the text of the appropriate agency-specific amendments to the common rule.

All grants administrative provisions in program regulations that are inconsistent with the common rule will be rescinded, except to the extent they are required by legislation or approved as a deviation by OMB. Each agency will specify in the agency-specific preamble and amendments added to the common rule those agency regulations that are rescinded. Likewise, all grants administrative provisions of noncodified program manuals, handbooks, policy statements, and other materials that are inconsistent with the rule will be superseded, except to the extent that they are required by legislation or approved by OMB.

Summary of Significant Changes

Extension of Regulations to Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

Historically, OMB Circulars A–102 and A–110 have been virtually identical. A–102 was first issued in 1971 with a series of Attachments A through O covering topics ranging from records retention to procurement. A–110 was issued in 1976, and from the standpoint of both format and content, was virtually indistinguishable in substance from A–102.

Each circular instructed Federal agencies responsible for administering grant programs to "issue the appropriate regulations necessary to implement the provisions of the Circular." In doing so, six departments and agencies (Departments of Agriculture, Education, Energy, Health and Human Services and Labor and the Environmental Protection Agency) each issued *one* regulation covering *all* grantees (i.e., covering State and local governments, as well as colleges, universities, hospitals, and other nonprofit organizations.) This approach was not, of course, to say that colleges and universities, for example, operate just like cities or counties. In fact, these organizations do have very real, and sometimes significant, differences in character and purpose. However, from the standpoint of accountability for Federal grant funds, OMB and the Federal agencies have recognized a similar, if not nearly identical, set of minimum requirements applicable to all grantees.

This common set of fiscal and administrative requirements, and the agencies' implementation of them in single departmental or agency rules, have worked quite well. In recognition of this, the proposed rule would extend, with certain exceptions, the applicability of the common rule published on March 11, 1988 to cover nongovernmental organizations.

Effect on States' Nongovernmental Subgrantees

This issue concerns the extent to which these Federal regulations should apply in the administration of subgrants by States. As the March 11, 1988 common rule explained (53 FR 8035–8036), in the past each OMB Circular required that its provisions be applied to subgrantees under Federal grants as well as direct grantees. This "flow-down" of the administrative requirements was to ensure that subgrantees were treated uniformly, regardless of whether the funds came directly from the Federal Government or through a State agency that was administering the program.

In the interest of Federalism, Federal agencies concluded that such restrictions on States in administering subgrants are no longer necessary. As stated in Executive Order 12612, "Federalism," published October 30, 1987 (52 FR 41685–88), States have unique Constitutional authority, resources, and competence. Section (3)(c) states: "With respect to national programs administered by the States, the Federal Government should grant the States the maximum administrative discretion. Intrusive Federal oversight of State administration is neither necessary nor desirable." Further, according to section (3)(d)(1), Federal agencies are to "Refrain, to the maximum extent possible, from establishing uniform, national standards for programs and, where possible, defer to the States to establish standards."

"Flow-down" provisions cannot be reconciled with the goal of placing maximum reliance on the States' own management systems. The March 11, 1988 common rule permits States to manage subgrants to governmental grantees more freely. This proposed rule would extend this flexibility by permitting States to use their own requirements in making subgrants to nongovernmental organizations as well. This would mean that nonprofit organizations will administer *direct* Federal grants according to the standards in the common rule, whereas Federal "pass-through" funds *subgranted* from a State will be administered according to State laws and procedures. The common rule shifts the basis for uniformity of the applicability of this regulation to one which recognizes States' increased role in financing and administering intergovernmental programs.

One exception is that in those few programs where local governments or nongovernmental organizations (as distinct from States) make subgrants, both the grantee and subgrantee must comply with these Federal requirements. There is no change here because nongovernmental grantees will continue (as before under Circular A–110) to require subgrantees to follow the uniform Federal administrative standards.

Extension of Regulations to Commercial Organizations

In enacting laws authorizing the award of financial assistance, Congress has generally excluded for-profit organizations from eligibility. (Federal cost principles and procurement regulations refer to for-profits as "commercial organizations.") Some Federal agencies that had statutory authority to award grants to commercial organizations in limited instances nevertheless elected not to do so as a matter of policy.

In 1982, the Department of Health and Human Services reversed its long-standing policy of not awarding grants or cooperative agreements to commercial organizations and has made a number of such awards. Since some other Federal agencies have similar statutory authorities and either are making or could make awards to commercial organizations, we are proposing to adopt standard government-wide rules for such awards.

Proposed new Subpart G would make commercial organizations subject to the same rules that apply to other nongovernmental grantees—except in two areas:

Real property, equipment and supplies. All acquisitions of real property, equipment and supplies under a grant or subgrant to a commercial organization would be subject to Federal prior approval requirements regardless of type or cost. Property acquired under a grant to a commercial organization would be subject to the same rules the Federal Government uses for property acquired by its contractors under Federal procurements. (Those

rules are in the clause entitled "Government Property" at 48 CFR 52.245–5 of the Federal Acquisition Regulation (FAR). If the property is acquired by a commercial organization under a subgrant from a government or a nonprofit organization, the grantee would be permitted to either take title to the property and administer it by the property rules in Subpart C, or require the commercial subgrantee to abide by the FAR clause cited above. Under either a grant or a subgrant, records subject to the FAR clause cited above would be exempt from the records retention requirements in § ____.42 and instead be subject to the records provisions of the FAR clause.

Program Income. Awarding agencies would be prohibited from allowing commercial grantees or subgrantees to use program income in accordance with the "addition" alternative specified in § ____.25.

In addition to the above differences, Subpart G would contain a reminder that § ____.22(a) provides, in effect, that no grant funds may be paid as profit to any grantee or subgrantee, even if the grantee or subgrantee is a commercial organization. "Profit" is defined as any amount in excess of allowable direct and indirect costs of the grantee.

Section-by-Section Analysis

Section ____.3 Definitions.

"Intangible Property and Debt Instruments"

A new paragraph is added to § ____.3 to define the term, "intangible property and debt instruments," to cover a category of property which is not otherwise clearly covered by the common rule. Such property is explicitly covered under the attachments to the previous OMB Circulars A–102 and A–110, and is intended to be covered under the common rule. To avoid any uncertainty, explicit language is necessary. The newly defined term is used in new § ____.38, which prescribed title, use, and disposition rules for that category of property.

"Local Government"

The definition of "local government" is proposed for amendment to clarify that local-controlled institutions of higher education and hospitals are excluded from the definitions of "local government."

"Nongovernmental Organizations"

Consistent with the expansion of scope of the common rule implementing OMB Circular A–102 to cover A–110 organizations, a definition of "nongovernmental organizations" is proposed for addition to the definitions section. The definition picks up all the organizations currently covered by OMB Circular A–110 and adds, for the first time, commercial organizations (for-profit organizations).

"Prior Approval"

The definition of "prior approval" is proposed for revision to make clear that the authorized official must prepare a written approval and that the mere documentation in the grant file of a telephone conversation would be insufficient to provide prior approval for a grant change.

"Share"

The definition of "share" has been revised to include guidance on computing the Federal share of real property which has been acquired on an amortized basis. This guidance is necessary because previous guidance was based only on outright purchase and did not clearly indicate the approporiate result for amortized purchases.

"State"

The definition of "State" is proposed for amendment to clarify that State-controlled institutions of higher education and hospitals are excluded from the definition of "State."

"Subgrant"

During discussions with auditors and officials of States and other organizations which receive Federal grant funds, there has been some concern voiced about the definition of a subgrant. Specifically, the question has been raised about whether contracts awarded under grants are subgrants.

The Federal Government believes that the critical element of whether or not an activity is a subgrant is the intent of the provision of those funds and not the mechanism (i.e., contract, grant, memorandum of agreement, etc.) used to convey those funds. The key issue is that the provision of financial assistance (vs. procurement of goods and services) is a subgrant, regardless of the mechanism used. It is also critical that grantees understand that subgrantees are not vendors providing goods and services.

Comment is requested on whether the definition of "subgrant" should be revised to change the reference to "contractual legal agreement" to "any legal agreement" in order to clarify that regardless of what mechanism is being used, or what name is given to that mechanism by a grantee organization to provide funds to another organization, when we refer to subgranting, we mean the provision of financial assistance.

"Supplies"

To conform the definition of "supplies" with the new definition of the term "intangible property and debt instruments," "supplies" is revised, by excluding from that term the category of personal property that is covered under "intangible property and debt instruments."

Section ____.4 Applicability.

Technical changes are proposed consistent with the expansion of coverage for the common rule.

Section ____.10 Forms for applying for grants.

No change is made to paragraph (a) Scope of this section because the forms prescribed are for use *only* by governmental applicants. However, certain provisions currently in § .10(b)(3) of the common rule implementing Circular A–102 are proposed for removal. These provisions instruct Federal agencies regarding the forms approval process. The provisions are proposed for removal because internal guidance to Federal agencies is inappropriate in regulations that establish requirements for grantees. Federal agencies are required to permit governments to use standard forms unless authorized by OMB to use alternative forms. Nongovernmental organizations must nevertheless use forms developed by Federal agencies and approved by OMB under the regulations implementing the Paperwork Reduction Act of 1980 (5 CFR Part 1320).

Section ____.21 Payment.

The current A–110 rule requiring grantees or subgrantees to place advances of Federal grant funds in interest-bearing accounts has been revised to waive this requirement when the grantee or subgrantee receives Federal advances of less than $120,000, or when the interest to be earned would not be sufficient to justify the expenses entailed by the requirement. We have also raised, from $100 to $250, the amount grantees and subgrantees may retain for expenses.

Section ____.25 Program income.

The common rule recognizes three uses for program income: the deduction method (using program income to reduce the overall costs under the grant); the addition method (using program income to increase the work under the grant over and above that contemplated in the original grant award); and the matching

method (using program income to meet cost-sharing or matching requirements). Section ____.25(g) prescribes the deduction method unless program regulations or the grant award permits one of the alternative methods.

Section ____.25(g) provides Federal agencies the flexibility to authorize the alternative methods through program regulations or grant award but contains a "default" to the deductive method. This is done largely as an administrative convenience and also for the sake of predictability—as recommended by the General Accounting Office (GAO).

Some Federal agencies are now concerned that a preference for the deduction method would operate as a disincentive to grantees to generate program income, and that such a disincentive would not promote the objectives of Federal grant programs. Sometimes the amount available for a grant is insufficient to meet the needs envisioned by the grantee. Program income used for program purposes can meet part of this need without the expenditure of additional Federal funds. It likewise promotes greater self-sufficiency on the grantee's part. While this applies to all grantees and subgrantees, it is especially true of nongovernmental organizations. Lacking the power to tax, they depend on revenues from many sources, including program income, to accomplish their missions. Comments are invited on this matter.

Section ____.26 Non-Federal audit.

The Single Audit Act of 1984 and OMB Circular A-128, Audits of State and Local Governments, require most State and local governments receiving Federal financial assistance to obtain annual audits. The existing audit requirements for nongovernmental organizations are set forth in OMB Circular A-110, Attachment F, paragraph 2(h).

Audit requirements for nongovernmental organizations are currently being reconsidered as a separate and distinct effort by the Office of Management and Budget and Federal agencies. Until such decisions are made, the agencies propose to retain the current A-110 audit requirements.

Section ____.30 Changes.

The language in § ____.30(c)(1)(ii) of the common rule that requires prior approval for certain budget changes is not changed for governments. However, for nongovernmental organizations, the common rule would now provide in a new § ____.30(c)(1)(iii) that nongovernmental organizations must obtain prior approval for changes that exceed or are expected to exceed 5 percent of the total current approved budget. The 5 percent rule is consistent with the current A-110.

An opportunity for Federal agencies to adopt more restrictive requirements was considered but is not proposed. This would have been permitted by inserting, at the beginning of § ____.30 (a) and (f), the phrase, "Unless the award document otherwise provides, " in each place. Under this approach, Federal agencies could require prior Federal agency approval of changes of less than 5 percent of the current total approved budget without obtaining OMB authorization under the exception provisions of § ____.6(b). Comments are solicited on this option.

A new prior approval requirement for the absence for more than 3 months of the approved project director or principal investigator is proposed for paragraph (d)(3) of this section. This is believed to be necessary because the qualifications of the proposed project director or principal investigator are frequently a major factor in the decision to award a discretionary grant, and the absence of that person for a 3-month or greater period may have a serious impact on the satisfactory conduct of the project during that time.

A new prior approval requirement is proposed by adding a paragraph at (d)(5) of this section for situations involving the proposed transfer of a grant to another institution. General Accounting Office decisions have recognized for a long time that, under certain specified conditions, transfer of a grant from the original grantee to a substitute grantee is appropriate. Approval of such a request is contingent on many of the same factors which led to selection of the original grantee.

At paragraph (f)(1) of this section, in order to simplify the burden on grantees, we are proposing that requests for prior approval may be submitted either through revisions of appropriate pages in the application or by letter.

Section ____.31 Real Property.

The current language in § ____.31(b) of the common rule is proposed to be expanded to clarify the existing statement that the grantee or subgrantee shall not dispose of or encumber the real property or interests in such property.

In order to protect the Federal Government's interest in real property which has been acquired in whole or in part with Federal grant funds, a new § ____.31(c) has been added which requires that nongovernmental grantees must obtain certain types of insurance. Though such a safeguard was never previously required under either Circular A-102 or A-110, it is necessary because grantees which are not State and local governments normally do not have the financial resources for self-insurance to protect the Federal Government's investment.

Technical changes are proposed for paragraph (c) of this section to rely on the definition of "share" in § ____.3, rather than restating the rule regarding the computation of the Federal share.

Section ____.32 Equipment.

Technical changes are proposed for this section to rely on the definition of "share" in § ____.3, rather than restating the rule regarding the computation of the Federal share, wherever it appears.

Existing OMB Circular A-110 provides for the grantee to be reimbursed for any reasonable shipping and interim storage costs incurred when the grantee has been instructed to ship to a new location equipment purchased with Federal grant funds. A new paragraph (e)(4) is proposed for addition to the common rule to apply this rule to both governments and nongovernmental organizations.

The current OMB Circular A-110 reflects statutory authority contained in the Federal Grant and Cooperative Agreement Act of 1977 which permits nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research to retain title to equipment without further accountability to the Federal Government for its use or disposition. The common rule is proposed for amendment to add a new § ____.32(h) to include this provision.

Section ____.33 Supplies.

When a grant is transferred from one institution to another, the Federal agency has the right to require the transfer of any equipment purchased under the grant. The Federal agencies considered the option of imposing this requirement on the transfer of supplies when the inventory of unused supplies exceeds $5,000 in total aggregate fair market value. Because this proposal was never in Circulars A-102 or A-110 nor adopted in the common rule, comments on the proposal are solicited.

Section ____.34 Copyrights and patents.

Section ____.34 of the common rule is proposed for revision to clarify the rule regarding ownership of copyrights, and the Federal Government's right to a royalty-free, nonexclusive, and irrevocable license in copyrightable works. The existing section is also

proposed to be redesignated as paragraph (a) and a new paragraph (b) is added to include a cross reference to the Department of Commerce's government-wide regulation regarding patents.

Section ____.36 Procurement.

Section ____.36(b). This section requires grantees and subgrantees to follow applicable State and local laws and regulations, if those laws and regulations ensure that procurements conform to applicable Federal laws and the standards of § 2.36. No change was made to this provision for non-governmental grantees and subgrantees, because these grantees and subgrantees must still follow State and local laws and regulations that may be applicable to them.

In § ____.36(b)(5), the term "multi-organizational" was added to the types of agreements that organizations negotiate for the procurement or use of common goods or services. This will permit organizations other than State and local governments to enter into these types of agreements.

There are a number of provisions in § ____.36 that are not now in Circular A-110 but are nevertheless appropriate for nongovernmental organizations. For example: the provision for the use of excess property in § ____.36(6); § ____.36(b)(7) encourages the use of value engineering; and, a restriction on the use of time and material contracts in § ____.36(b)(10) has been extended to nongovernmental organizations because it is considered good procurement practice for all types of grantees.

Section ____.36(d), Methods of procurement to be followed, contains the procurement methods that are consistent with the methods used by the Federal Government. Nongovernmental organizations had objected to the previous emphasis favoring advertised "low bid" procedures. The common rule merely outlines the different procurement methods, and does not have this emphasis, except for the procurement of construction.

Section ____.36(f)(2) requires grantees and subgrantees to negotiate profit as a separate element of price in certain situations. The common rule has been clarified to note that this is required only when profit or fee is included in the price of a contract.

Sections ____.36(i)(7), (8), and (9) contain awarding agency requirements for grantees and subgrantees to include in contracts. The reference to awarding agency requirements means the requirements imposed on the grantee or subgrantee by the Federal agency. This use of the term awarding agency is in conflict with the definition of "awarding agency" contained in § ____.3, Definitions. These are Federal agency requirements that apply to grantees and could flow though to subgrants. The paragraphs have been revised to change "awarding agency" to "Federal agency."

Sections ____.36(i)(10), (12), and (13) contain contract requirements for grantees and subgrantees to include in contracts that were not contained in previous requirements imposed on nongovernmental grantees and subgrantees. Sections ____.36(i)(12) and (13) are required by the laws cited in those paragraphs. Section ____.36(i)(10) adds access to records of all types of contracts, not just negotiated contracts as had been previously required for nongovernmental grantees and subgrantees.

Several Federal agencies have observed that the numerous provisions contained in this section could be made more accessible to readers if the section were divided into numbered subsections, organized by topics and issues connected with procurement under grants. Comments are invited on renumbering § ____.36 as follows:

Procurement Policies of States

§ ____.xx Procurement Policies of States [(a)]*

Procurement Policies of Other Grantees and Subgrantees

§ ____.xx Procurement policies for other grantees and subgrantees; Purpose of § ____.xx____.xx

General Requirements

§ ____.xx Maintain minimum procurement procedures [(b)(1)]
§ ____.xx Maintain a system of contract administration [(b)(2)]
§ ____.xx Maintain written standards of conduct [(b)(3)]
§ ____.xx Procedures to avoid inefficient procurements [(b)(4)&(5)]
§ ____.xx Contracts with small and minority firms, women's business enterprise, and labor surplus area firms [(e)]
§ ____.xx Use of Federal excess property [(b)(6)]

Competition

§ ____.xx Full and open competition [(c)(1)]
§ ____.xx No State preference permitted [(c)(2)]

The Selection Process

§ ____.xx Maintain standards for selection [(b)(8)]
§ ____.xx Maintain written selection procedures [(c)(3)]
§ ____.xx Maintenance of a prequalification list [(c)(4)]
§ ____.xx Review of proposed procurements by the awarding agency [(g)(1)]
§ ____.xx Documentation of proposed procurements [(g)(2)]
§ ____.xx Waiver of proposed procurement review [(g)(3)]

Costs and Bonding Requirements

§ ____.xx Limitation on estimated cost contracts [(f)(3)]
§ ____.xx Cost and price analysis [(f)(1)]
§ ____.xx Negotiation of profit or fee
§ ____.xx Bonding requirements [(h)]

Methods of Procurement

§ ____.xx Small purchase procedures [(d)(1)]
§ ____.xx Sealed bid standards and requirements [(d)(2)]
§ ____.xx Competitive purchases [(d)(3)]
§ ____.xx Noncompetitive purchases [(d)(4)]
§ ____.xx Limitations on time and material contracts [(b)(10)]
§ ____.xx Limitations on cost-plus contracts [(f)(4)]

Contract Provisions

§ ____.xx Requirements for certain contract clauses and changes by Federal agencies [(i)–intro]
§ ____.xx Clauses for contracts [(i) and (b)(7)]

Contract Monitoring

§ ____.xx Contract monitoring [(b)(2)]

Disputes Resolution

§ ____.xx Maintain disputes resolution process [(b)(11)]
§ ____.xx Disputes subject to Federal agency review [(b)(12)]

Grantee and Subgrantee Records

§ ____.xx Detail significant history of a procurement [(b)(9)]

Section ____.37 Subgrants.

Section ____.37(a) has been revised to permit States to use State laws and procedures when administering subgrants to all types of subgrantees. As explained in Executive Order 12612, "Federalism," States possess unique constitutional authority, resources and competence. In the March 11, 1988 common rule States were given maximum authority to manage subgrants to local and Indian tribal governments. Consistent with Executive Order 12612, this common rule will extend this authority to all types of subgrantees. However, subgrantees will continue to use the Federal cost principles that are applicable to the kind of organizations incurring the costs. Section ____.22, Allowable costs, stipulates that, depending on the kind of organizations, Circular A-21 (educational institutions), A-87 (governments), A-122 (nonprofits), or 48 CFR Part 31 (commercial organizations) will apply. The common rule has been clarified to note that States can still apply the provisions of this regulation,

* Citations in brackets are to paragraph designations in § ____.36 of the proposed common regulations as they appear at the end of this document.

and that States must inform subgrantees whether State or Federal procedures must be followed.

Sections ____.37(a)(2) and (b)(3) have been revised to clarify that grantees are required to ensure subgrantee compliance with requirements imposed by Federal statutes and regulations. The common rule currently states that grantees must ensure that subgrantees are aware of Federal requirements.

Section ____.37(c) has been revised to note that the common rule does not imply and direct relationship between Federal agencies and subgrantees. Grantees are responsible for ensuring that their subgrantees comply with appropriate requirements.

Section ____.38 Intangible property and debt instruments.

This new section is proposed to establish title, use, and disposition rules for intangible property and debt instruments, defined in §____.3, previously discussed in this preamble, a category of property which might otherwise appear not covered by the common rule. Neither Circular A–102 nor A–110 contained such a requirement in the past. The common rule establishes requirements that are equivalent to those established for equipment.

Section ____.39 Grant property trust relationship and notices.

This proposed new section is intended to help protect property acquired or improved with Federal grant assistance, from: (a) Inadvertent or deliberate unauthorized encumbrance or other misuse while held by the grantee; (b) improper disposition by the grantee without repayment to the Federal Government of the fair market value of the Federal assistance; or, (c) liquidation in bankruptcy proceedings, for payment of creditors or administrative expenses of the bankrupt estate, without repayment of the Federal assistance.

The first sentence of the proposed new section, stating that grantees and subgrantees hold grant property "in trust," establishes the Federal interest that property should be used for its intended beneficial purposes. For more than 25, years, it has been established Federal policy that "assets in the hands of the grantee are charged with the obligation to be used for the purposes and subject to the conditions of the grant." 42 Comp. Gen. 289, 294 (1962). Nevertheless, without express regulatory language asserting that policy, there is a risk—notably in grantee bankruptcy situations—that grant property will be diverted from its intended purpose, without repayment to the Federal Government. See, for instance, *In Re Joliet-Will County Community Action Agency*, 58 B.R. 973 (N.D. Ill. 1986), *aff'd* 78 B.R. 184 (N.D. Ill. 1987). The first sentence of new § ____.39 asserts the intended policy.

The second sentence of the proposed new section is necessary to confirm the authority of Federal agencies to require nongovernmental grantees to place liens or notices to protect grant property from unauthorized encumbrance or disposition. Liens and notices, reciting that property has been acquired or improved with Federal grant assistance and that use and disposition conditions apply to the property, are placed on record by property owners, i.e., by grantees or subgrantees in the case of Federal grant-assisted property.

With the passage of time after a grant award, grant or subgrant officials may forget that there are prohibitions against unauthorized sale or mortgaging of the grant property, or they may remember that restrictions apply, but believe that circumstances require that the restrictions be ignored. In those cases, a notice placed on record is a useful reminder, to the grantee or subgrantee and to the prospective transferee or mortgages, that the Federal interest is to be protected. Such notices, including liens where appropriate, involve minimal paperwork, and have no significant adverse consequences to grantees or subgrantees who stay in compliance. Requiring compliance with the conditions of a grant award in these cases is a way to assure those grantees and subgrantees who do comply that they are not doing more than is required of others.

Sometimes, even though liens or notices are placed on record, grant-assisted property may nevertheless be encumbered, foreclosed upon, sold, or otherwise misused. In such cases, the liens or notices can be indispensible for recovering to the Federal Government the Federal share of the value of the property. The second sentence of the proposed new § ____.39, by itself and in conjunction with the first sentence of this section, discussed above, is necessary for all these reasons. Comments are invited on this new section, which was not previously contained in Circular A–110.

Section ____.41 Financial reporting.

The last sentence of paragraph (a)(2) of this section stipulates that grantees shall not impose more burdensome financial reporting requirements on subgrantees. Comments have been received that this provision is appropriate for State and local governments but may not be appropriate for the private, nonprofit sector. Many private, nonprofit grantees may wish to impose additional reporting requirements on their subgrantees as part of their stewardship over Federal grant funds. Since Circular A–110 does not currently permit this and no change has been made to the common rule, comments are solicited on this subject.

Section ____.41(b)(4) has been amended to permit grantees to submit financial reports later than 90 days after the end of the grant year in situations where the Federal agency has extended the deadline for liquidation of obligations.

Section ____.50 Closeout.

Section ____.50(b), Liquidation of obligations, is proposed for addition. This provision repeats § ____.23(b) of the common rule because it is also relevant to the closeout of grants.

Subpart F—Special provisions for research.

The common rule would provide Federal agencies the opportunity to use special terms and conditions for research. Subpart F is a set of simplified administrative requirements which Federal agencies are proposing as a result of the "Florida Demonstration Project."

In March 1986, five Federal agencies began the Florida Demonstration Project to test ways to increase research productivity and reduce overhead costs on sponsored research. In March 1988, the Presidential Task Force on Regulatory Relief approved expansion of the project to include research contracts as well as grants and to include universities and research facilities outside of Florida. At the same time, the Interagency Assessment Committee composed of the senior policy officials of the participating agencies recommended immediate implementation of the most successful subset of the Demonstration procedures.

Since the terms and conditions of the Demonstration research agreements require waivers of provisions of the common rule, the proposed common rule would create a new Subpart F to permit routine application of the simplified provisions.

Impact Analyses

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules, which are defined in the Order as any rule that has an annual effect on the economy of $100 million or more, or certain other specified effects. We intend the rule to result in savings to all organizations receiving grants or

subgrants. For example, the increase in the threshold for the definition of equipment would significantly reduce the recordkeeping costs for all organizations. However, we do not believe that the rule will have an annual economic effect of $100 million or more or the other effects listed in the Order. For this reason, we have determined that this rule is not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. 605(b)), Federal agencies generally publish for each rule with "significant economic impact on a substantial number of small entities," an analysis describing the rule's impact on small entities and identifying and significant alternatives to the rule that would minimize the economic impact on small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the covered programs, but rather modifies and updates administrative and procedural requirements.

Paperwork Reduction Act

Sections ____.10(b); ____.20(b); ____.24(b)(6); ____.30(f)(1), (2) and (3); ____.32(d)(1) and (f)(2); ____.36(b)(9), (c)(3), and (i); ____.40(b)(2), (c) and (d); ____.41(b), (c), (d) and (e); ____.42(b); ____.50(c) of this rule contain collection-of-information requirements. As required by the Paperwork Reduction Act of 1980, each agency shall submit a copy of this rule to the Office of Management and Budget for its review of these reporting and recordkeeping requirements. No grantee may be subject to a penalty for failure to comply with these information collection requirements until the requirements have been approved and assigned an OMB control number.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 3015 and 3016

FOR FURTHER INFORMATION CONTACT: Gerald Miske (Branch Chief), (202) 382-1553.

ADDITIONAL SUPPLEMENTARY INFORMATION: USDA's current regulation establishing Departmentwide policies and standards for the administration of grants and cooperative agreements for nongovernmental organizations is found at 7 CFR Part 3015, "Uniform Federal Assistance Regulations." The rule primarily implements OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations"; Circular A-128, "Audits of State and Local Governments"; and Executive Order 12372, "Intergovernmental Review of Federal Programs." Part 3015 also sets forth the Department's policy on competition in awarding discretionary grants and cooperative agreements and identifies the cost principles specified in Circular A-21 for universities, A-87 for State and local governments, A-122 for nonprofit organizations, and 41 CFR 1-15.2 for commercial organizations. In addition, Part 3015 had previously included the administrative requirements for grants and cooperative agreements to State and local governments that were prescribed by OMB Circular A-102. However, on March 11, 1988, USDA joined a "common rule" publication (one common regulation signed and implemented verbatim by all Federal government agencies) and moved those requirements to a new part, 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Through this action, USDA is now proposing to amend the March 11, 1988, common rule to include the administrative requirements for nongovernmental entities that were previously included in Part 3015. Therefore, after amendment, USDA's new Part 3016, with several exceptions, will apply to both governmental and nongovernmental recipients of Federal assistance. Otherwise, the applicability of Part 3016 will be consistent with that adopted on March 11, 1988. There will be no change in the types of transactions that will be covered. Part 3016 applies only to assistance relationships documented by grants and cooperative agreements, and subawards thereunder. Thus, Part 3016 does not apply to transactions entered into under sections 1472(b), 1473A, and 1473C of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by the Food Security Act (7 U.S.C. 3318, 3319a and 3319c).

By joining this common rule publication, Part 3015 will no longer prescribe the general administrative regulations for Federal assistance relationships with nongovernmental entities. However, as indicated above, there will be several exceptions. The common rule, as amended, will not apply to open-ended entitlement programs. Coverage for entitlement programs will be provided in a future Subpart E of 7 CFR Part 3016. Pending the issuance of Subpart E, the open-ended entitlement programs of the Food and Nutrition Service listed below, will remain subject to the requirements of 7 CFR Part 3015, and will not be covered by the amended common rule (7 CFR Part 3016).

(a) State Administrative Matching Grants for Food Stamp Program

(b) National School Lunch Program

(c) School Breakfast Program

(d) Summer Food Service Program

(e) Child Care Food Program

(f) Special Milk Program for Children

(g) State Administrative Expenses Under the Child Nutrition Act (sec. 7 of the Child Nutrition Act)

In addition to the open-ended entitlement programs listed above that will be included in Subpart E when issued, the following subparts of Part 3015 will remain in effect for all governmental and nongovernmental entities:

(a) Subpart I on audits.

(b) Subpart Q, § 3015.158 on competition.

(c) Subpart T on cost principles.

(d) Subpart V on intergovernmental review of Federal Programs.

(e) Subpart W on nonprocurement debarment and suspension (to be issued at a later date).

In addition to the changes referenced above, it will be necessary for USDA to propose three additional changes to its existing regulations. The first change concerns the title of 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." This title will now need to be changed to reflect that the rule no longer covers solely State and local governments, but will also cover nongovernmental and commercial organizations as well. Therefore, USDA is proposing to change the title to, "Uniform Administrative Requirements for Grants and Cooperative Agreements." This title is the same as that given to the governmentwide common rule and this title will also convey to USDA's amended common rule.

The second change necessitated by these revisions concerns amendments to 7 CFR 3015.1 and 3015.2 which will redefine the purpose of this subpart and the recipients to which this amended rule applies. Since the policies that will remain behind in Part 3015 are not being revised, USDA requests that comments be limited to the clarity of the changes in § 3015.1 and 3015.2.

The final change is required to update the reference to the cost principles that are applicable to for-profit organizations from 41 CFR 1-15.2 (Federal Procurement Regulations) to 48 CFR

Subpart 31.2 (Federal Acquisition Regulations).

List of Subjects

7 CFR 3015

Grant programs (Agriculture), Intergovernmental relations.

7 CFR 3016

Grant programs (Agriculture).

Issued at Washington, DC, October 7, 1988.

Accordingly, it is proposed to amend Title 7 of the Code of Federal Regulations as set forth below.

John J. Franke, Jr.,

Assistant Secretary for Administration.

Richard E. Lyng,

Secretary of Agriculture.

1. It is proposed that Title 7 of the Code of Federal Regulations be amended by revising Part 3016 as set forth at the end of this document.

PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Sbpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records, Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements (Reserved)

Subpart F—Special Provisions for Research and Other Programs

Subpart G—Special Provisions for Commercial Organizations

Authority: 5 U.S.C. 301.

Cross Reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 3016 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "USDA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 3016.3 is amended by adding a definition for "USDA" alphabetically to read as follows:

§ 3016.3 Definitions.

* * * * *

"USDA" means the U.S. Department of Agriculture.

* * * * *

PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

3. USDA proposes to amend Subpart A of 7 CFR Part 3015 as follows:

a. The authority citation for Part 3015 continues to read as follows:

Authority: 5 U.S.C. 301.

b. Section 3015.1 is amended by revising paragraphs (a)(1) and (a)(3) as follows:

Subpart A—General

§ 3015.1 Purpose and scope of this part.

(a)(1) This part establishes USDA-wide uniform requirements for the administration of open-ended entitlement programs, and contains rules that specify the set of principles used for determining allowable costs under USDA grants and cooperative agreements to all State and local governments, universities, non-profit and for-profit organizations as set forth in OMB Circulars A–87, A–21, and A–122, and in 48 CFR Subpart 31.2, respectively.

* * * * *

(3) Rules for nonentitlement grants and cooperative agreements to all other governmental and nongovernmental entities are found in Part 3016.

* * * * *

c. Section 3015.2 is amended by adding paragraph (d)(6) as follows:

§ 3015.2 Applicability.

* * * * *

(d) * * *

(6) Nongovernmental entities except open-ended entitlements to nongovernmental entities.

* * * * *

Subpart T—Cost Principles

d. Section 3015.194 is revised to read as follows:

§ 3015.194 For-profit organizations.

The principles to be used when determining the allowable costs of activities conducted by for-profit organizations are contained in the Federal Acquisition Regulation at 48 CFR Subpart 31.2. Exception: Independent research and development costs including any indirect costs allocable to them are unallowable. Independent research and development are defined in the Federal Acquisition Regulation at 48 CFR 31.205–18.

DEPARTMENT OF ENERGY

10 CFR Part 600

FOR FURTHER INFORMATION CONTACT: Edward F. Sharp, Business and Financial Policy Division (MA–422), U.S. Department of Energy, Washington, DC 20585, (202) 586–8192.

ADDITIONAL SUPPLEMENTARY INFORMATION: The proposed common rule that accompanies this preamble combines formerly separate OMB guidances to agencies for use in awarding grants and cooperative agreements to: (1) State and local governments; (2) universities and nonprofit organizations; and (3) commercial organizations. This combination is being proposed as a single common rule because many of the requirements for the administration of financial assistance are not dependent on the nature of the institution to which the award is made. Thus, an economical approach to rulemaking suggests the value of placing standard administrative

requirements in one document and having that document specify whatever distinctions are necessary concerning the types of recipients.

While the attached proposal is receiving public review and comment, the Department of Energy (DOE) is considering the adoption of a modification of the following rule to facilitate administration of grants and cooperative agreements. In considering such a modification, the Department would not change the content of the administrative requirements. The procedures would be consistent with those being established by other Executive Departments and Agencies.

Specifically, should DOE follow through with the modification, the Department would, in a final rule, separate the proposed common rule into two separate rules, the first to govern awards to state and local governments and commercial organizations and the second to govern those to universities and nonprofit organizations.

The Department is considering such a separation because DOE transactions affected by the proposed common rule are principally grants and cooperative agreements to academic and nonprofit institutions for the support of research and development related to energy. By including in a single document what had previously been in two documents, as the proposed common rule would do, we believe it may be more difficult for DOE recipients, contracting officers, and financial assistance administrators to determine which rules apply to a particular type of recipient. In the final rulemaking, therefore, the Department would incorporate into 10 CFR Part 600, Subpart F, only those provisions of the rule that are applicable to universities and nonprofit organizations. Provisions of the proposed rule affecting state and local governments and commercial organizations would be incorporated as changes to 10 CFR Part 600, Subpart E, DOE's implementation of the government-wide common rule (issued March 11, 1988) which replaced OMB Circular A-102.

It is recognized that if the approach being suggested here is followed, there will be many identical or nearly identical sections appearing in both subparts. DOE believes that this duplication is not necessarily undesirable, however, if the separated rules simplify understanding and use by recipients and contracting officers. Although the text which would demonstrate DOE's suggested approach is not included as part of today's proposed rule, DOE is interested in public reaction to the idea of separating the subparts. Accordingly, public comment is welcomed on this recommendation, since the Department is considering such a separation in large part because we believe it will be easier on the users of the rules. Further, other agencies may wish to consider this approach to final rulemaking.

Comment is also sought on the requirement in the common rule that, for state and local governments, costs incurred prior to award may not be authorized in advance but only on the award document itself. This is the result of the reliance in § ____.22(b) of the cost principles in OMB Circular A-87.

DOE has concluded that no substantial issue of fact or law exists and the rule is unlikely to have a substantial impact on the nation's economy or large numbers of individuals or businesses. The opportunity to file comments in writing should suffice for those persons interested in responding to today's proposal. Therefore, this notice does not provide for a public hearing.

List of Subjects in 10 CFR Part 600

Accounting, Administrative practice and procedure, Grants/energy, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Part 600 of Title 10 of the Code of Federal Regulations be amended as set forth below.

Issued in Washington, DC October 10, 1988.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 600—FINANCIAL ASSISTANCE RULES

The authority citation for Part 600 continues to read as follows and a cross reference is added below the authority citation to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 98 Stat. 1003-1005 (31 U.S.C. 6301-6308).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Subpart E is revised to read as set forth at the end of this document:

Subpart E—Uniform Administrative Requirements for Grants and Cooperative Agreements

General

Sec.

600.400 (____.1) Purpose and scope of this subpart.
600.401 (____.2) Scope of §§ 600.400 through 600.405.
600.402 (____.3) Definitions.
600.403 (____.4) Applicability.
600.404 (____.5) Effect on other issuances.
600.405 (____.6) Additions and exceptions.

Pre-Award Requirements

600.410 (____.10) Forms for applying for grants.
600.411 (____.11) State plans.
600.412 (____.12) Special grant or subgrant conditions for high-risk grantees.

Post-Award Requirements

Financial Administration

600.420 (____.20) Standards for financial management systems.
600.421 (____.21) Payment.
600.422 (____.22) Allowable costs.
600.423 (____.23) Period of availability of funds.
600.424 (____.24) Matching or cost sharing.
600.425 (____.25) Program income.
600.426 (____.26) Non-Federal audit.

Changes, Property, and Subawards

600.430 (____.30) Changes.
600.431 (____.31) Real property.
600.432 (____.32) Equipment.
600.433 (____.33) Supplies.
600.434 (____.34) Copyrights and patents.
600.435 (____.35) Subawards to debarred and suspended parties.
600.436 (____.36) Procurement.
600.437 (____.37) Subgrants.
600.438 (____.38) Intangible property and debt instruments.
600.439 (____.39) Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

600.440 (____.40) Monitoring and reporting program performance.
600.441 (____.41) Financial reporting.
600.442 (____.42) Retention and access requirements for records.
600.443 (____.43) Enforcement.
600.444 (____.44) Termination for convenience.

After-the-Grant Requirements

600.450 (____.50) Closeout.
600.451 (____.51) Later disallowances and adjustments.
600.452 (____.52) Collections of amounts due.

Entitlements [Reserved]

Special Provisions for Research and Other Programs

600.470 (____.70) Scope of section.
600.471 (____.71) Special provisions.

Special Provisions for Commercial Organizations

600.480 (____.80) Scope of section.
600.481 (____.81) Prohibition against fee or profit.
600.482 (____.82) Real property and equipment.
600.483 (____.83) Program income.

3. Subpart E is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "DOE" is added wherever "[Agency]" and "[agency]" appear.

b. In newly revised Subpart E, remove the terms "Part", "part", "Subpart" and "subpart" and add "Subpart", "subpart", "Section" and "section" respectively, wherever they appear.

§ 600.401 Scope of §§ 600.400 through 600.405.

c. The heading for § 600.401 is revised to read as set forth above.

d. Section 600.402 is amended by adding a definition for "DOE" alphabetically to read as follows:

§ 600.402 Definitions.

* * * * *

"DOE" means Department of Energy.

* * * * *

SMALL BUSINESS ADMINISTRATION

13 CFR Part 143

FOR FURTHER INFORMATION CONTACT: Karin L. Genis, Attorney-Adviser (202) 653-6649.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is authorized to make grants or enter into cooperative agreements under three provisions of the Small Business Act (15 U.S.C. 631 *et seq.*). Under section 7(j)(1) of that Act (15 U.S.C. 636(j)(1)), the Agency is authorized to enter into grants or cooperative agreements with public or private organizations to finance projects designed to assist businesses eligible to receive assistance under sections 7(i) and 8(a) of the Small Business Act (15 U.S.C. 636(i) and 637(a)). Under section 8(b)(2) of the Act (15 U.S.C. 637(b)(2)), the Agency may enter into grants or cooperative agreements with voluntary organizations to assist the Agency in providing management or technical assistance to small businesses. Finally, the Agency is authorized by section 21(a) of the Act (15 U.S.C. 648(a)) to enter into grants or cooperative agreements with Small Business Development Centers (SBDCs) for the purpose of making available management and technical assistance to small businesses.

As promulgated on March 11, 1988, Part 143 of title 13, Code of Federal Regulations (CFR) covered only grants and cooperative agreements made to State or local governments under section 7(j)(1). The proposed rule, if adopted in final form, would expand the scope of 13 CFR Part 143 to cover all grants and cooperative agreements entered into by the SBA. All affected SBA programs are specifically invited to comment on this proposed rule.

The SBA is proposing a specific addition to the common rule as it applies to SBA's grant and cooperative agreement programs, to be included in 13 CFR Part 143. SBA proposes to exempt grants and cooperative agreements entered into under section 7(j) of the Small Business Act from the common rule's prohibition of fees or profits to grantees or subgrantees. §§ 143.22(a)(2) and 143.81.) SBA currently negotiates a five to ten percent profit in many of its cooperative agreements with commercial organizations under its 7(j) program. It is SBA's position that this profit is necessary to provide sufficient incentive to qualified commercial entities to apply for grants to assist small and small disadvantaged concerns under the 7(j) program. In SBA's view, removal of this incentive will result in a drastic reduction in the number of concerns applying for 7(j) grants and a consequent reduction in the quality of services provided. Full participation of for-profit concerns is essential since those concerns are the prime source of the management and technical skills and expertise needed by the small and small disadvantaged businesses that are the ultimate beneficiaries of the 7(j) program.

SBA is one of the only Federal agencies that provides grants directly to for-profit concerns. Over 90 percent of the cooperative agreements entered into under SBA's 7(j) program are with for-profit concerns. The vast majority of such concerns are small businesses which cannot afford to perform these services without receiving a profit. Moreover, there are insufficient numbers of non-profit concerns which are capable of and interested in performing these services. For all of the above reasons, SBA believes that an exemption from the profit prohibition is warranted in the case of SBA's 7(j) program. Public comment is specifically solicited on this proposal.

List of Subjects in 13 CFR Part 143

Accounting, Administration practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements, Small businesses.

It is proposed that Part 143 of Title 13 of the Code of Federal Regulations be amended as set forth below.

Date: October 7, 1988.

James Abdnor,

Administrator.

1. Part 143 is revised to read as set forth at the end of this document.

PART 143—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records, Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

Subpart G—Special Provisions for Commercial Organizations

Authority: 15 U.S.C. 634(b)(6).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 143 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "SBA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 143.3 is amended by adding a definition for "SBA" alphabetically to read as follows:

§ 143.3 Definitions.

* * * * *

"SBA" means the Small Business Administration.

* * * * *

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1270

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8923.

ADDITIONAL SUPPLEMENTARY INFORMATION: The entire body of regulations applicable to NASA grants and cooperative agreements has traditionally appeared in or is incorporated by reference in the NASA Grant and Cooperative Agreement Handbook (14 CFR Part 1260). In the administrative area, the Handbook contains NASA implementation of OMB Circular A-110. With publication as a final rule of this proposed common rule (14 CFR Part 1270), all current Handbook material related to or overlapping the common rule will be superseded. Appropriate revisions will be made in 14 CFR Part 1260 to accommodate 14 CFR Part 1270. In several instances, this accommodation requires the inclusion in the NASA regulatory structure of administrative guidelines for procedures or actions which are not authorized under NASA grants or cooperative agreements. Their publication at 14 CFR Part 1270 does not constitute such authorization. This structure is formally noted in the amendment to § 1270.1.

In particular, guidelines for grants to other than educational institutions or other non-profit organizations, subgrants, construction grants, and transfer of grants are inoperative absent a deviation pursuant to 14 CFR 1260.106. When the common rule specifies that waivers or other direction by NASA is permissible, the regulatory guidance in such matters will be found in the Handbook (14 CFR Part 1260).

NASA's current implementation of OMB Circular A-110 in 14 CFR Part 1260 is not as extensive as in the common rule which combines the regulatory material in OMB Circulars A-102 and A-110. Comment on any anticipated differences in administrative burden or other factors under the current NASA regulations and under the common rule would be of interest. NASA would also be interested in comments on separating the "A-102" and "A-110" components of the common rule as suggested by the Department of Defense and the National Science Foundation in their common rule preambles.

Section 1270.25(a) encourages, without exception, researchers to generate income under grants. Comment is sought on any potential deleterious effects of the requirement on the conduct of research at universities.

List of Subjects in 14 CFR Part 1270

Grant administration.

It is proposed that Title 14 of the Code of Federal Regulations be amended as set forth below.

S.J. Evans,

Assistant Administrator for Procurement.

1. Part 1270 is added to read as set forth at the end of this document.

PART 1270—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records, Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

Subpart G—Special Provisions for Commercial Organizations

Authority: Pub. L. 97-258, 31 U.S.C. 6301 et seq.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1270 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "NASA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 1270.1 is amended by adding paragraph (a) to read as follows:

§ 1270.1 Purpose and scope of this part.

* * * * *

(a) As this is a common rule, applicable to numerous agencies, it contains administrative regulations for some activities or actions not otherwise allowable by NASA. Publication herein of such administrative rules does not constitute authority to enter into transactions which are prohibited or not specifically authorized in NASA's Grant and Cooperative Agreement Handbook (14 CFR Part 1260). Regulations regarding the exercise of permitted waivers or options in this Part 1270 are found in 14 CFR Part 1260.

c. Section 1270.3 is amended by adding a definition for "NASA" alphabetically to read as follows:

§ 1270.3 Definitions.

* * * * *

"NASA" means National Aeronautics and Space Administration.

* * * * *

d. Section 1270.71(a) is amended by adding paragraph (a)(1) to read as follows:

§ 1270.71 Special provisions.

(a) * * *

(1) Any necessary exceptions will be included in the award instruments.

* * * * *

DEPARTMENT OF COMMERCE

15 CFR Part 24

FOR FURTHER INFORMATION CONTACT: Comments may be mailed to Barbara L. Spithas, Room 6026, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230 (202) 377–5817.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department is proposing to make changes to Part 24 as explained below.

The Department proposes to revise its definition of "grant" in § 24.3 to indicate that it excludes cooperative research and development agreements as defined in section 11 of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502).

The Department proposes to revise § 24.30, paragraphs (c)(1)(ii) and (iii) by replacing the word "waived" with the words "otherwise specified by" in each paragraph. This proposed modification authorizes the Department to provide more restrictive as well as less restrictive requirements for nonconstruction project budget changes for those programs or for those projects, where deemed necessary. The Department contemplates situations, other than those involving high-risk grantees, in which there may be a particular concern that the agency's consent be obtained before a change of even five percent or ten percent of the total approved budget be authorized. And, in the case of paragraph 24.30(c)(ii), there are circumstances in which the Department would not wish governmental grantees to appear to be authorized to change 100 percent of the budget for a grant of under $100,000, without the consent of the grantor agency.

Section 24.30 is further proposed for revision in paragraph (c)(2) by deleting the period and insering, in lieu thereof, the following phrase: "and for other budget revisions as stated in an award document." This proposed modification is required for those construction projects and programs where, in the Department's experience, prior agency consent for budget changes appears necessary to assure completion of all project elements and to help prevent changes in project scope.

A new § 24.39, declaring that grant property is held in trust, and authorizing the recording of liens or notices against property acquired by nongovernmental grantees, is an important addition for all agencies. Nevertheless, for Commerce, it falls short in one respect. Based upon the experience of the Economic Development Agency and the National Telecommunications and Information Administration (NTIA), the Department of Commerce needs the authority to record liens or notices against property acquired by governmental as well as nongovernmental grantees.

Therefore, the Department proposes to revise § 24.39 to delete the word "nongovernmental" before the word "grantees" in the second sentence. This is in support of the existing Department of Commerce practice, and is consistent with the Department's concerns reflected in 15 CFR 24.31(b)(1) published March 11, 1988 (53 FR 8049).

Section 24.71 is proposed for revision by inserting the phrase "or such provisions thereof as specified by the [agency]," between the words "special provisions" and the words "shall apply to grants" in the first sentence. This proposed modification will permit greater use of the subpart, by authorizing the Department to specify that some but not all of the special provisions will apply to grants subject to the subpart.

In addition to the proposed revisions to Part 24 explained above, the Department would like an exception granted in accordance with 15 CFR 24.6(b). This section allows OMB to authorize exceptions for classes of grants or grantees. The exception is requested from Subpart G, Special Provisions for Commercial Organizations. This subpart contains provisions that apply to grants and subgrants to commercial organizations. Section 24.81, Prohibition against profit, of this part prohibits the use of grant funds as profit to any recipient of a grant or subgrant. The Department of Commerce policy has been to allow commercial organizations (for-profit institutions) profits of up to seven percent of the direct costs. Therefore, the proposed exception for the Department of Commerce is in support of current Department policy.

For example, as a result of General Accounting Office and Congressional subcommittee evaluations and recommendations, the Department's Minority Business Development Agency (MBDA) has sought firms and organizations which can provide expert management and technical assistance to minority firms through its Minority Business Development Center (MBDC) program. In 1981, the Department allowed MBDA to award a maximum profit/fee of 7 percent of total direct costs to attract competent profit-making organizations. Currently, there are approximately 100 MBDCs in operation. Of this number, 51 for-profit organizations operate the MBDCs. Some may operate more than one MBDC.

Recipients of MBDC awards must contribute a 15 percent non-federal share to the projects. Additionally, these recipients are required to charge a fee for services to clients; recipients are also held accountable for both the billing and collection of the fees. These requirements pose unusual risk factors for the recipients without the compensation of a profit. Given the proposed elimination of profit, the Department's concern is that the MBDC program will not attract competent for-profit firms into this program which is specifically designed to help minority firms. Therefore, the Department seeks an exemption from the prohibition of profit. The exception is requested for the Department in support of current policy and to provide for consistent and uniform policies among its diverse programs.

Finally, the Department proposes that the National Telecommunications and Information Administration's (NTIA) Public Telecommunications Facilities Program (PTFP) adhere to the non-construction requirements rather than the construction requirements where there are differences between the two. In addition, the Department proposes to apply § 24.32, Equipment, to the PTFP program.

In the first instance, NTIA's authorizing legislation defines "construction" as the acquisition, installation, and modernization of public telecommunications facilities and the planning and preparatory steps incidental to any such acquisition, installation or modernization (47 U.S.C. 397(1)). Notwithstanding this definition, however, the Department does not believe that the activities conducted by NTIA fall under what is commonly referred to as "construction" or the

intent of the common rule's distinction between constructionand non-construction programs. Moreover, NTIA has never administered the PTFP program in a manner consistent with § 24.30(c)(2) or 24.40(c). For these reasons, and in order to allow NTIA to properly manage its PTFP grants, the Department proposes to apply § 24.32 to PTFP.

In the second instance, § 24.32, Equipment, sets forth management and disposition requirements for equipment acquired under a grant or subgrant. Equipment is defined as "tangible, nonexpendable personal property having * * * an acquisition cost of $5,000 or more per unit." A significant portion of PTFP funded electronic equipment items do not have such a high acquisition cost and would be considered "supplies." Thus, a large amount of grant-related equipment would fall outside the administrative requirements of § 24.32 of the common rule, which would result in serious grant management problems for NTIA. A radio or television station production studio, for example, consists of an inventory of items falling within and outside the proposed definition. Under current practice, NTIA treats grant-related equipment as a whole, subjecting each item to identical administrative requirements. Under the common rule, however, NTIA must distinguish between two categories of personal property based solely on per unit acquisition cost.

The Department believes that the authorizing legislation for the PTFP requires that all grant-related tangible, nonexpendable personal property be accounted for as "equipment." The rules regarding "supplies" would not permit NTIA to properly carry out its role as manager of PTFP grants. Therefore, the Department advocates an exception from the per unit acquisition cost threshold for the PTFP.

The Department welcomes any comments the public may have on the proposed revisions and the requests for exceptions.

All Commerce reporting and recordkeeping requirements in the Common Rule have current OMB approval.

List of Subjects in 15 CFR Part 24

Accounting, Administration practice and procedures, Grant programs, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 15 of the Code of Federal Regulations be amended as set forth below:

Sonya G. Stewart,

Director, for Finance and Federal Assistance.

1. Part 24 is revised to read as set forth at the end of this document with the Departments revisions as indicated above:

PART 24—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
24.1 Purpose and scope of this part.
24.2 Scope of subpart.
24.3 Definitions.
24.4 Applicability.
24.5 Effect on other issuances.
24.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

24.10 Forms for applying for grants.
24.11 State plans.
24.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

24.20 Standards for financial management systems.
24.21 Payment.
24.22 Allowable costs.
24.23 Period of availability of funds.
24.24 Matching or cost sharing.
24.25 Program income.
24.26 Non-Federal audit.

Changes, Property, and Subawards

24.30 Changes.
24.31 Real property.
24.32 Equipment.
24.33 Supplies.
24.34 Copyrights and patents.
24.35 Subawards to debarred and suspended parties.
24.36 Procurement.
24.37 Subgrants.
24.38 Intangible property and debt instruments.
24.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

24.40 Monitoring and reporting program performance.
24.41 Financial reporting.
24.42 Retention and access requirements for records.
24.43 Enforcement.
24.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

24.50 Closeout.
24.51 Later disallowances and adjustments.
24.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

24.70 Scope of subpart.
24.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

24.80 Scope of subpart.
24.81 Prohibition against fee or profit.
24.82 Real property and equipment.
24.83 Program income.

Authority: 5 U.S.C. 301.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 24 is proposed for further amendment by removing "[Agency]" and "[agency]" and adding "Department of Commerce" wherever "[Agency]" and "[agency]" appear.

DEPARTMENT OF STATE

22 CFR Part 135

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive, Room 227, SA–6, U.S. Department of State, Washington, DC 20520, telephone (703) 875–7046.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State will amend its current regulatory coverage at 22 CFR Part 135 for grants and cooperative agreements with state and local governments to incorporate the proposed rule. The Department has not previously promulgated regulatory coverage for grants and cooperative agreements with nongovernmental entities.

List of Subjects in 22 CFR Part 135

Accounting, Administrative practice and procedure, Grant programs—foreign relations, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 22 of the Code of Federal Regulations be amended as set forth below.

John J. Conway,

Procurement Executive.

1. Part 135 is revised to read as set forth at the end of this document:

PART 135—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
135.1 Purpose and scope of this part.
135.2 Scope of subpart.
135.3 Definitions.
135.4 Applicability.
135.5 Effect on other issuances.
135.6 Additions and exceptions.

Authority: 22 U.S.C. 2658.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 135 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "DOS" is added wherever "[Agency]" and "[agency]" appear.

b. Section 135.3 is amended by adding a definition for "DOS" alphabetically to read as follows:

§ 135.3 Definitions.

* * * * *

"DOS" means Department of State.

* * * * *

INTERNATIONAL DEVELOPMENT CORPORATION AGENCY

Agency for International Development

22 CFR Part 226

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Ms. Kathleen J. O'Hara, Room, 1600I, SA–14, Agency for International Development, Washington, DC, (703) 875–1534.

SUPPLEMENTARY INFORMATION: The Agency for International Development (A.I.D.) intends to incorporate the proposed common rule as a new Part 226 of Title 22 of the Code of Federal Regulations. A.I.D. guidance for its grants and cooperative agreements is contained in the Agency's Handbook series—principally Handbook 13. This Agency guidance is being reviewed and amended to ensure consistency with the common rule and revised OMB guidance.

List of Subjects in 22 CFR Part 226

Accounting, Administrative practice and procedure, Grant programs-Foreign aid, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 22 of the Code of Federal Regulations be amended as set forth below.

Dated: October 13, 1988.

John F. Owens,

Associate Assistant to the Administrator for Management.

1. Part 226 is added to read as set forth at the end of this document:

PART 226—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Authority: Section 621, Foreign Assistance Act of 1961 (FAA), 22 U.S.C. 2381; Section 635, FAA, 22 U.S.C. 2395.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 226 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "A.I.D." is added wherever "[Agency]" and "[agency]" appear.

b. Section 226.3 is amended by adding a definition for "A.I.D." alphabetically to read as follows:

§ 226.3 Definitions.

* * * * *

"A.I.D." means the Agency for International Development.

* * * * *

UNITED STATES INFORMATION AGENCY

22 CFR Part 518

FOR FURTHER INFORMATION CONTACT: Darwin Roberts, United States Information Agency, Office of Contracts, Policy and Procedures Staff, Room 1611, 330 C Street, SW., Washington, DC 20547 Telephone: (202) 485–6410.

List of Subjects in 22 CFR Part 518

Accounting, Administration practice and procedures, Grant programs—Grants administration, Contract administration, Financial management, Grant monitoring, Reporting and Recordkeeping requirements.

It is proposed that Title 22 of the Code of Federal Regulations be amended as set forth below.

Philip R. Rogers,

Agency Procurement Executive.

1. Part 518 is revised to read as set forth at the end of this document:

PART 518—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

518.1 Purpose and scope of this part.
518.2 Scope of subpart.
518.3 Definitions.
518.4 Applicability.
518.5 Effect on other issuances.
518.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

518.10 Forms for applying for grants.
518.11 State plans.
518.12 Specials grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

518.20 Standards for financial management systems.
518.21 Payment.
518.22 Allowable costs.
518.23 Period of availability of funds.
518.24 Matching or cost sharing.
518.25 Program income.
518.26 Non-Federal audit.

Changes, Property, and Subawards

518.30 Changes.
518.31 Real Property.
518.32 Equipment.
518.33 Supplies.
518.34 Copyrights and patents.
518.35 Subawards to debarred and suspended parties.
518.36 Procurement.
518.37 Subgrants.
518.38 Intangible property and debt instruments.
518.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

518.40 Monitoring and reporting program performance.
518.41 Financial reporting.
518.42 Retention and access requirements for records.
518.43 Enforcement.
518.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

518.50 Closeout.
518.51 Later disallowances and adjustments.
518.52 Collections of amounts due.

Subpart E—Entitlements (Reserved)

Subpart F—Special Provisions for Research and Other Programs

518.70 Scope of subpart.
518.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

518.80 Scope of subpart.
518.81 Prohibition against fee or profit.
518.82 Real property and equipment.
518.83 Program income.

Authority: 40 U.S.C. 486(c).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 518 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "USIA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 518.3 is amended adding a definition for "USIA" alphabetically to read as follows:

§ 518.3 Definitions.

* * * * *

"USIA" means United States Information Agency.

* * * * *

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 85

[Docket No. R–88–1426; FR–2376]

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Room 5260, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–5294. (This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION: Many nongovernmental organizations receiving financial assistance under HUD grant programs do so as subgrantees of the governmental grantees, *e.g.*, under the Community Development Block Grant program. Other nongovernmental organizations receive financial assistance under HUD grant programs where both governmental and nongovernmental organizations are eligible grantees. Where provisions of the A–102 Common Rule were not made applicable to governmental grantees under HUD grant programs because the provisions were inconsistent with the statutory requirements of the programs or because OMB approved exceptions, the provisions will also not be made applicable, in most cases, to nongovernmental organizations. (See the HUD preamble to the final A–102 Common Rule published March 11, 1988 (53 FR 8034, 8050–56).)

This rule was listed as item 1016 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13889) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 85

Grant administration, State and local governments, Cooperative agreements.

It is proposed that Title 24 of the Code of Federal Regulations be amended as set forth below:

Date: October 6, 1988.

Samuel R. Pierce, Jr.,

Secretary, Housing and Urban Development.

1. Part 85 is revised to read as set forth at the end of this document.

PART 85—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

85.1 Purpose and scope of this part.
85.2 Scope of subpart.
85.3 Definitions.
85.4 Applicability.
85.5 Effect on other issuances.
85.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

85.10 Forms for applying for grants.
85.11 State plans.
85.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

85.20 Standards for financial management systems.
85.21 Payment.
85.22 Allowable costs.
85.23 Period of availability of funds.
85.24 Matching or cost sharing.

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 85 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "HUD" is added wherever "[Agency]" and "[agency]" appear.

b. Section 85.3 is amended by adding a definition for "HUD" alphabetically to read as follows:

§ 85.3 Definitions.

* * * * *

"HUD" means the Department of Housing and Urban Development.

* * * * *

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

FOR FURTHER INFORMATION CONTACT: George H. Bradley, Office of Chief Counsel, Internal Revenue Service, Room 4002, Washington, DC 20224. Telephone 202–343–0231 (not a toll-free number).

ADDITIONAL SUPPLEMENTARY INFORMATION: With respect to the Internal Revenue Service, the only program that would be affected by these proposed rules is the Tax Counseling for the Elderly (TCE) program.

List of Subjects in 26 CFR Part 601

Administration practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Grant programs, Grants administration, Tax counseling for the elderly, taxes.

Proposed Amendments to the Regulations

It is proposed that Title 26 of the Code of Federal Regulations be amended as set forth below.

Michael J. Murphy,

Commissioner of Internal Revenue (Acting).

PART 601—STATEMENT OF PROCEDURAL RULES

Paragraph 1. The authority for Part 601 continues to read in part:

Authority: 5 U.S.C. 301 and 552.

Par. 2. Subpart J is redesignated Subpart K and a new Subpart J is added to read as set forth at the end of this document.

Subpart J—Uniform Administrative Requirements for Grants and Cooperative Agreements

General

Sec.
601.1001 (____.1) Purpose and scope of this subpart.
601.1002 (____.2) Scope of §§ 601.1001 through 601.1005.
601.1003 (____.3) Definitions.
601.1004 (____.4) Applicability.
601.1005 (____.5) Effect on other issuances.
601.1006 (____.6) Additions and exceptions.

Pre-Award Requirements

601.1010 (____.10) Forms for applying for grants.
601.1011 (____.11) State plans.
601.1012 (____.12) Special grant or subgrant conditions for high-risk grantees.

Post-Award Requirements

Financial Administration

601.1020 (____.20) Standards for financial management systems.
601.1021 (____.21) Payment.
601.1022 (____.22) Allowable costs.
601.1023 (____.23) Period of availability of funds.
601.1024 (____.24) Matching or cost sharing.
601.1025 (____.25) Program income.
601.1026 (____.26) Non-Federal audit.

Changes, Property, and Subawards

601.1030 (____.30) Changes.
601.1031 (____.31) Real property.
601.1032 (____.32) Equipment.
601.1033 (____.33) Supplies.
601.1034 (____.34) Copyrights and patents.
601.1035 (____.35) Subawards to debarred and suspended parties.
601.1036 (____.36) Procurement.
601.1037 (____.37) Subgrants.
601.1038 (____.38) Intangible property and debt instruments.
601.1039 (____.39) Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

601.1040 (____.40) Monitoring and reporting program performance.
601.1041 (____.41) Financial reporting.
601.1042 (____.42) Retention and access requirements for records.
601.1043 (____.43) Enforcement.
601.1044 (____.44) Termination for convenience.

After-the-Grant Requirements

601.1050 (____.50) Closeout.
601.1051 (____.51) Later disallowances and adjustments.
601.1052 (____.52) Collections of amounts due.

Entitlements [Reserved]

Special Provisions for Research and Other Programs

601.1070 (____.70) Scope of §§ 601.1070 through 601.1071.
601.1071 (____.71) Special provisions.

Special Provisions for Commercial Organizations

601.1080 (____.80) Scope of §§ 601.1080 through 601.1083.
601.1081 (____.81) Prohibition against fee or profit.
601.1082 (____.82) Real property and equipment.
601.1083 (____.83) Program income.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Subpart J is further amended as follows:

a. Subpart J is amended by removing "[Agency]" and "[agency]" and adding "Department of Treasury" wherever "[Agency]" and "[agency]" appear.

b. Subpart J is amended by removing "Part", "part", "Subpart" and "subpart" and adding "Subpart", "subpart" "Section" and "section" respectively, wherever they appear.

DEPARTMENT OF JUSTICE

28 CFR Part 66

FOR FURTHER INFORMATION CONTACT: Jack A. Nadol, Department of Justice, Office of Justice Programs, 633 Indiana

Ave., NW., Room 942, Washington, DC 20531, (202) 724-7608.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice has adopted uniform administrative rules for state and local governments, institutions of higher education, hospitals, other nonprofit organizations, and commercial or for-profit entities which will be applicable to grants and cooperative agreements awarded by components of the Department of Justice. These include: The Bureau of Justice Assistance, Bureau of Justice Statistics, Bureau of Prisons, Community Relations Service, Drug Enforcement Administration, Immigration and Naturalization Service, National Institute of Corrections, National Institute of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Office for Victims of Crime, and U.S. Marshals Service.

Drug Enforcement Administration (DEA) contracts that are issued under 21 U.S.C. 873(a)(7) are exempt. However, in the event DEA is authorized to fund grants to governmental and/or nongovernmental organizations in the future, DEA would be subject to the common grants management regulation.

With respect to grants and cooperative agreements of the Office of Justice Programs (OJP), this regulation replaces Appendixes 3 and 4 of OJP Guideline Manual 7100.1C, Financial and Administrative Guide for Grants.

List of Subjects in 28 CFR Part 66

Accounting, Administration practice and procedures, Grant programs—Law, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 28 of the Code of Federal Regulations be amended as set forth below.

Dick Thornburgh,

Attorney General.

October 20, 1988.

1. Part 66 is revised to read as set forth at the end of this document.

PART 66—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records, Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

Subpart G—Special Provisions for Commercial Organizations

Authority: The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, et seq. (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, et seq. (as amended); Victims of Crime Act of 1984, 42 U.S.C 10601, et seq. (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351-4353.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 66 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "DOJ" is added wherever "[Agency]" and "[agency]" appear.

b. Section 66.3 is amended by adding a definition for "DOJ" alphabetically to read as follows:

§ 66.3 Definitions.

* * * * *

"DOJ" means Department of Justice.

* * * * *

c. Section 66.32 is amended by adding paragraph (a)(1) to read as follows:

§ 66.32 Equipment.

(a) * * *

(1) This statutory requirement is applicable to the Office of Justice Programs, U.S. Department of Justice. The Omnibus Crime Control and Safe Streets Act of 1968, as amended, Pub. L. 90-351, section 808, requires that the title to all equipment and supplies purchased with sections 403 or 1302 (block or formula funds) shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in sections 408 or 1308 that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

* * * * *

d. Section 66.33 is amended by adding paragraph (a)(1) to read as follows:

§ 66.33 Supplies.

(a) * * *

(1) This statutory requirement is applicable to the Office of Justice Programs, U.S. Department of Justice. The Omnibus Crime Control and Safe Streets Act of 1968, as amended, Pub. L. 90-351, section 808, requires that the title to all equipment and supplies purchased with sections 403 or 1302 (block or formula funds) shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in sections 408 or 1308 that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

* * * * *

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 97

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg, Room S–1522, U.S. Department of Labor, Washington, DC 20210. Telephone: (202) 523–8904.

ADDITIONAL SUPPLEMENTARY INFORMATION: As indicated in the previously published DOL specific preamble to the common rule 29 CFR Part 97, for governmental grants (53 FR 8069, March 11, 1988), the Department of Labor had previously published regulations implementing both OMB Circulars A–102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and A–110, Uniform Administrative Requirements for Grants and Cooperative Agreements with Non-profit Institutions, at 41 CFR Part 29–70 (1984). With the adoption of the March 11, 1988 regulations covering governmental grants, 41 CFR Part 29–70 (1984) was no longer applicable to those grants. When this amendment to 29 CFR Part 97 is finalized, 41 CFR Part 29–70 (1984) will no longer be applicable to grants to non-profit institutions.

List of Subjects in 29 CFR Part 97

Accounting, Administration practice and procedures, Grant programs—Governmental and non-governmental, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 29 of the Code of Federal Regulations be amended as set forth below.

Ann McLaughlin,

Secretary of Labor.

1. Part 97 is revised to read as set forth at the end of this document.

PART—97 UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records, Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements (Reserved)

Subpart F—Special Provisions for Research and Other Programs

Subpart G—Special Provisions for Commercial Organizations

Authority: 5 U.S.C. 301; OMB Circulars A–102 and A–110.

Cross reference: See also Office of Management and Budget notice published at 52 FR 23729 (June 24, 1987).

2. Part 97 is further amended by removing "[Agency]" and "[agency]" and adding "Department of Labor" wherever "[Agency]" and "[agency]" appear.

Federal Mediation and Conciliation Service

29 CFR Part 1470

FOR FURTHER INFORMATION CONTACT: Lee A. Buddendeck, (202) 653–5320.

List of Subjects in 29 CFR Part 1470

Grants administration, Reporting and recordkeeping requirements.

It is proposed that Title 29 of the Code of Federal Regulations be amended as set forth below.

Kay McMurray,

Director.

1. Part 1470 is revised to read as set forth at the end of this document:

PART 1470—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records, Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

1470.70 Scope of subpart.
1470.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

1470.80 Scope of subpart.
1470.81 Prohibition against fee or profit.
1470.82 Real property and equipment.
1470.83 Program income.

Authority: 29 U.S.C. 175a.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1470 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "FMCS" is added wherever "[Agency]" and "[agency]" appear.

b. Section 1470.3 is amended by adding a definition for "FMCS" alphabetically to read as follows:

§ 1470.3 Definitions.

* * * * *

"FMCS" means Federal Mediation and Conciliation Service.

* * * * *

DEPARTMENT OF DEFENSE

32 CFR Part 279

FOR FURTHER INFORMATION CONTACT: Dr. Mark Herbst, (202) 694–0205.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense proposes to adopt a modification of the following rule to govern administration of grants and cooperative agreements. In adopting the modification of the government-wide common rule, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will establish uniform procedures that are consistent with those being established by other Executive Departments and Agencies.

The proposed common rule would combine implementation of formerly separate OMB guidance to agencies for grants and cooperative agreements with: (1) State and local governments, (2) universities and nonprofit organizations, and (3) commercial organizations. In making its final rule, the Department of Defense intends to separate the proposed common rule into two separate rules, the first to govern awards to state and local governments and to commercial organizations and the second to govern those to universities and nonprofit organizations.

The Department proposes this separation because DoD transactions subject to the proposed rule principally are grants to academic and nonprofit institutions for the support of research and development related to military needs. There is little other activity subject to the rule. Adopting separately that portion of the rule relevant to research grants is the best way to provide for a clear rule for the use of DoD grantees, grants officers and grants administrators. The rule would be more difficult to understand if it had interwoven, dissimilar provisions for other classes of institutions, those with which DoD does little business subject to the rule.

In final rulemaking, therefore, the Department proposes to incorporate into 32 CFR Part 279 only those provisions of the rule that are applicable to universities and nonprofit organizations. Provisions applicable to state and local governments and commercial organizations will be incorporated as revisions to 32 CFR Part 278, the government-wide common rule adopted on March 11, 1988 (53 FR 8034), to implement the updated OMB Circular A–102. There will be some identical or nearly identical sections appearing in both rules, but this duplication is not undesirable if the separated rules simplify understanding and use of the rules by grantees and grants officers. Public comment is welcomed on this proposal to separate the rules, as other agencies may wish to consider this approach at final rulemaking.

The Department also will make minor amendments to §§ 279.70 and 279.71 at final rulemaking. Under these sections of the proposed common rule, if any agency uses any of the Florida Demonstration Project (FDP) provisions to eliminate unnecessary bureaucratic red tape and streamline funding of university research, it must use *all* of the provisions. The Department will amend these sections to be consistent with current federal-wide policy, which allows agencies to use selected FDP provisions, as appropriate, in university research grants. Amending §§ 279.70 and 279.71 will allow DoD, one of the five original agencies in the demonstration project, to continue to use FDP provisions. Otherwise, the Department likely would have to forego further use of all FDP provisions.

Finally, the Department proposes to add a section to Subpart B to clarify that non-governmental grantees must comply with applicable federal statutes and regulations and that there may be pre-award requirements for them to provide assurances in this regard. Similar statements currently are made in the rule for governmental organizations receiving grants (in § 279.11), for organizations receiving procurement contracts under grants [in § 279.36(i)], and for subgrantees (in § 279.37). The proposed new section would give equal notification within the rule to non-governmental grantees.

List of Subjects in 32 CFR Part 279

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 32 of the Code of Federal Regulations be amended as set forth below.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 31, 1988.

1. It is proposed to add Part 279 to read as set forth at the end of this document.

PART 279—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
279.1 Purpose and scope of this part.
279.2 Scope of subpart.
279.3 Definitions.
279.4 Applicability.
279.5 Effect on other issuances.
279.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

279.10 Forms for applying for grants.
279.11 State plans.
279.12 Special grant to subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

279.20 Standards for financial management systems.
279.21 Payment.
279.22 Allowable costs.
279.23 Period of availability of funds.
279.24 Matching or cost sharing.
279.25 Program income.
279.26 Non-Federal audit.

Changes, Property, and Subawards

279.30 Changes.
279.31 Real property.
279.32 Equipment.
279.33 Supplies.
279.34 Copyrights and patents.
279.35 Subawards to debarred and suspended parties.
279.36 Procurement.
279.37 Subgrants.
279.38 Intangible property and debt instruments.
279.39 Grant property trust relationship and notices.

Authority: 5 U.S.C. 301.

Cross Reference: See also Office of Management and Budget Notice published at 52 FR 23729 (June 24, 1987).

2. It is proposed to further amend the newly added Part 279 by removing "[Agency]" and "[agency]" and adding "the Military Departments and Defense Agencies" wherever "[Agency]" and "[agency]" appear.

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 80

ADDRESS: Comments should be sent to: Mary Hughes, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3122, ROB-3), Washington, DC 20202-4700.

FOR FURTHER INFORMATION CONTACT: Mary Hughes, 732-7400.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Secretary proposes in this document to revise Part 74 to implement the common regulations to be used by all Federal agencies under Office of Management and Budget (OMB) Circulars A-102 and A-110. When the common regulations become effective after a Notice of Final Rulemaking, the revised Part 74 will replace the current Part 74 in its entirety. Part 74 currently implements OMB Circular A-110 and applies to institutions of higher education, hospitals, and nonprofit organizations, and Part 80, published as a final regulation on March 11, 1988, implements OMB Circular A-102 and applies to State and local governments, including federally-recognized Indian tribal organizations. The revised Part 74 will contain a single set of regulations, applicable to all types of organizations currently covered by OMB Circulars A-102 and A-110. In addition, the revised Part 74 will apply to commercial organizations that participate in grants and cooperative agreements.

Until the new Part 74 is published as a final regulation, the current Part 74 and Part 80 apply to their respective groups of organizations for all grants awarded by the Department under programs subject to those Parts.

Section ____.5 of the common regulations indicates that certain documents containing provisions inconsistent with the common regulations are superseded by the common regulations. The Secretary has completed the process of identifying inconsistent program regulations for those programs subject to the current Part 80, and will shortly publish technical amendments in the Federal Register. Because the regulations proposed in this document would expand the scope of the common regulations to institutions of higher education, hospitals, nonprofit and commercial organizations, the Secretary is now interested in comment on whether any program regulations to which these entities are subject are inconsistent with the common regulations. The Secretary plans to revoke, in the final rulemaking document, any inconsistent program regulations that are not required by statute or by the nature of a particular program as authorized in the program statute. To assist in this process of identifying inconsistent provisions, the Secretary seeks comments on any program regulations that may be appropriate to revoke.

The Secretary is aware that Parts 75 and 76 contain cross-references to the current Part 74 and Part 80 and that these references should be changed to refer to the revised Part 74. The Secretary will conduct a review of Parts 75 and 76 during the comment period for these regulations. As a result, when the revised Part 74 is published as a final regulation, the Secretary will also publish appropriate amendments to Parts 75 and 76 to include cross-references to Part 74.

The Secretary also proposes two changes to the expanded common regulations that have already been implemented for State and local governments under the rulemaking procedure for Part 80. The first change is necessary under section 412 of the Department of Education Organization Act (DEOA). 20 U.S.C. 3472. Under this section the Secretary may delegate the functions of the Department only to officers and employees of the Department. However, § ____.6(b) of the proposed common regulations would have the effect of delegating one of the Secretary's functions to employees of the Office of Management and Budget—authorizing OMB to grant exceptions to the common regulations as promulgated by the Secretary for the programs administered by the Department of Education. In order to avoid any conflict with the DEOA, the Secretary proposes to revise ____.6(b) so that the Secretary would authorize exceptions to the common regulations after consultation with appropriate officials of OMB.

The second change is necessary to implement the five-year record retention rule required by section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1237f). Section ____.42(b) of the proposed common regulations requires a recipient to maintain a record for only 3 years unless a longer retention period is necessary to resolve issues pursuant to any litigation, claim, negotiation, audit, or other action involving the record. The Secretary proposes to add a paragraph (b)(4) to § ____.42 of the proposed common regulations to clarify that a recipient must maintain a record for a minimum of five years after the completion of the activity for which funds are used under an "applicable program" covered by GEPA.

This proposed amendment would have the effect of establishing a minimum 5-year record retention period under most programs administered by the Department. However, certain programs, such as those programs administered by the Commissioner of the Rehabilitative Services Administration under the Rehabilitation Act of 1973, as amended, would still be subject to the 3-year record retention rule contained in the common regulations.

The Secretary also proposes to add new text, establishing five appendices to Part 74. These appendices include cost principles for certain organizations and audit standards for State and local governments.

- Appendix A—Cost Principles for State and Local Goverments (OMB Circular A-87).
- Appendix B—Cost Principles for Nonprofit Organizations (OMB Circular A-122).
- Appendix C—Cost Principles for Educational Institutions (OMB Circular A-21).
- Appendix D—Cost Principles for Hospitals.

• Appendix E—Audit Requirements for State and Local Governments (OMB Circular A–128).

Finally, the Secretary proposes to add authority citations after every substantive provision of the common regulations. These authority citations are required under section 431(a)(2) of GEPA (20 U.S.C. 1232(a)(2)).

List of Subjects in 34 CFR Part 74

Accounting, Administrative practice and procedure, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number: Not Applicable)

Dated: October 11, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations as set forth below.

1. Part 74 is revised to read as set forth at the end of this document:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

Subpart G—Special Provisions for Commercial Organizations

Authority: 20 U.S.C. 122le–3(a)(1), 3474; and OMB Circulars A–102 and A–110, unless otherwise noted.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 74 is further amended, as follows.

a. "[Agency]" and "[agency]" are removed and "ED" is added wherever "[Agency]" and "[agency]" appear.

b. Section 74.22 is amended by revising the chart in paragraph (b) to read as follows:

§ 74.22 Allowable costs.

* * * * *

(b) * * *

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	Appendix A to this Part.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) an organization named in Appendix B to this Part as not being subject to that Appendix.	Appendix B to this Part.
Institution of higher education.	Appendix C to this Part.
Hosptial	Appendix D to this Part.
For-profit organization other than a hospital and an organization named in Appendix B to this Part as not subject to that Appendix.	48 CFR Part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to ED.

c. In § 74.26 paragraph (a) is amended by removing "Federal agency implementing regulations." and adding "and Appendix E to this Part." and a note is added to the end of the section to read as follows:

§ 74.26 Non-Federal audit.

* * * * *

Note.—Appendix E to this Part contains the audit requirements for State and local governments.

d. Section 74.31 is amended by a adding a new paragraph (e) to read as follows:

§ 74.31 Real property.

* * * * *

(e) The provisions of paragraph (d) of this section do not apply to disaster assistance under subsections (b) and (c) of section 7 of Pub. L. 81–874, as amended (20 U.S.C. 241–1(b)–(c)) and the construction provisions of the Impact Aid program, sections 1–17 of Pub. L. 81–815, as amended (20 U.S.C. 631–647).

e. Section 74.32 is amended by adding a new paragraph (i) to read as follows:

§ 74.32 Equipment.

* * * * *

(i) The provisions of paragraphs (c), (d), and (e) of this section do not apply to disaster assistance under subsections (b) and (c) of section 7 of Pub. L. 81–874, as amended (20 U.S.C. 241–1(b)–(c)) and the construction provisions of the Impact Aid program, sections 1–17 of Pub. L. 81–815, as amended (20 U.S.C. 631–647).

f. Section 74.42 is amended by adding a new paragraph (b)(4) to read as follows:

§ 74.42 Retention and access requirements for records.

* * * * *

(b) * * *

(4) A recipient that receives funds under a program subject to section 437 of the General Education Provisions Act (20 U.S.C. 1232f) shall retain records for a minimum of five years after the

starting date specified in paragraph (c) of this section.

* * * * *

g. An authority citation is added after each section in Part 74 to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circulars A–102 and A–110.

h. Appendix A to Part 74 is added, to read as follows:

Appendix A to Part 74—Cost Principles for State and Local Governments (OMB Circular A–87)

Attachment A to Appendix A—General Principles

Table of Contents

A. *Purpose and scope.*

1. *Objectives.* This Attachment sets forth principles for determining the allowable costs of programs administered by State, local, and federally-recognized Indian tribal governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally-assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State, local, and federally recognized Indian tribal governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally-assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied by all Federal agencies in determining costs incurred by State, local, and federally recognized Indian tribal governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly-financed educational institutions subject to Appendix C to this part, and (b) publicly-owned hospitals and other providers of medical care subject to Appendix D to this part.

B. Definitions.

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objective including specific grants, projects, contracts, and other activities.

5. *Federal agency* means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State, local, or federally-recognized Indian tribal governments.

6. *Federally-recognized Indian tribal governments* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

7. *Grant* means an agreement between the Federal Government and a State, local, or federally-recognized Indian tribal government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Circular as applicable to grants in general also apply to any federally-sponsored cost reimbursement-type of agreement performed by a State, local, or federally-recognized Indian tribal government.

8. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

9. *Grantee* means the department or agency of State, local, or federally recognized Indian tribal government which is responsible for administration of the grant.

10. *Local unit* means any political subdivision of government below the State level.

11. *Other State or local agencies* means department or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

12. *Services,* as used herein, means goods and facilities, as well as services.

13. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. *Basic guidelines.*

1. *Factors affecting allowability of costs.* To allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant programs, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State, local or federally-recognized Indian tribal governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.*

a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this Appendix may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in Section J.

3. *Applicable credits.*

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances, recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. *Composition of Cost*

1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow:

E. *Direct Costs*

1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and efforts devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. *Indirect Costs*

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Appendix. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used.

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.*

a. Federal grants may be subject to laws that limit the amount of indirect costs that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix, the amount not recoverable as indirect costs under a grant not be shifted to another federally-sponsored grant program or contract.

G. *Cost Incurred by Agencies Other Than the Grantee*

1. *General.* The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs (Section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in Section F.2.a.

H. *Cost Incurred by Grantee Department for Others*

1. *General.* The principles provided in Section G will also be used in determining the cost of services provided by the grantee department to another agency.

I. *Cost Allocation Plan*

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be

allocated under plans of other agencies or organizational units which are to be included in the costs of federally-sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally-sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Health and Human Services in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees in preparation of cost allocation plans.

This responsibility applies to both central support services at the State, local, and Indian tribal level and indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.*

a. The Department of Health and Human Services, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single cognizant Federal agency will have responsibility similar to that set forth in a. above, for the negotiation, approval, and audit of the indirect cost proposal. A current list of agency assignments is maintained by the Office of Management and Budget.

c. Questions concerning the cost allocation plans approved under a. and b. above, should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.*

a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is maintained by the Office of Management and Budget.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Negotiation and approval of indirect cost proposals for federally recognized Indian tribal governments.* The Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

7. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with 4 and 5 above, the Office of Management and Budget will lend assistance as required.

Attachment B to Appendix A—Standards for Selected Items of Costs

Table of Contents

A. *Purpose and applicability.*

1. *Objective.* This Attachment provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Attachment A of this Appendix.

B. *Allowable costs.*

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes costs incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or Indian tribal government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. solicitation of bids for the procurement of goods and services required.

c. disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communications costs incurred for telephone calls or service, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.*

a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not

necessarily limited to wages, salaries, and supplementary compensation and benefits (Section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered; (2) follows an appointment made in accordance with State, local, or Indian tribal government laws and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally-assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State, local, or Indian tribal government. In cases where the kinds of employees required for the federally-assisted activities are not found in the other activities of the State, local, or Indian tribal government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and provided in accordance with generally accepted practice of the State, local, or Indian tribal government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.*

a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where the title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally-accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally-sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usuable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in Section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system; and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State, local or Indian tribal policy, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State, local or Indian tribal government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither added to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.*

a *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program; (2) the expenditure is for agency membership; (3) the cost of the membership is reasonably related to the value of the services or benefits received; and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The cost of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of

bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development, which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may by charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally sponsored activities. The difference in cost between first-class air accommodations and less-first-class air accommodations are not is unallowable except when less-than-first-class air accommodations reasonably available. Notwithstanding the provisions of paragraphs D.6, and 8., travel costs of officials covered by those paragraphs, when specifically related to grant programs, are allowable with the prior-approval of grantor agency.

C. *Cost Allowable With Approval of Grantor Agency*

1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipmenmt. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below.

The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately-owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.* The rental cost of space in a privately-owned building is allowable. Similar costs for publicly owned buildings newly occupied on or after October 1, 1980, are allowable where "rental rate" systems, or equivalent systems that adequately reflect actual costs, are employed. Such charges must be determined on the basis of actual cost (including depreciation based on the useful life of the building, interest paid or accrued, operation and maintenance, and other allowable costs). Where these costs are included in rental charges, they may not be charged elsewhere. No costs will be included for purchases or construction that were originally financed by the Federal Government.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (Section C.3) are allowable when specifically approved by the grantor agency.

d. *Depreciation and just allowances on publicly-owned buildings.* The costs are allowable as provided in Section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold; (b) no longer available for use in a federally-sponsored program; or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly-acquired assets is allowable.

4. *Insurance and indemnification.*

a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Cost of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification.* Includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Costs of professional services rendered by individuals or organizations not a part of the grantee department are allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. *Unallowable Costs*

1. Bad debts. Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision, are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs by the chief executive and his staff is allowable. The allowable portion shall be

determined by the Federal cognizant agency and the Indian government representative on a reasonable basis.

7. *Interest and other financial costs.* Interest on borrowing (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation and except as provided for in paragraph C.2.a of this Attachment.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circulars A–102, A–110, and A–87)

i. Appendix B to Part 74 is added, to read as follows:

Appendix B to Part 74—Cost Principles for Nonprofit Organizations (OMB Circular A–122)

Attachment A to Appendix B—General Principles

Table of Contents

A. *Basic Considerations*

1. *Composition of total costs.* The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. *Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria:*

a. Be reasonable for the performance of the award and be allocable thereto under these principles.

b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.

c. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization.

d. Be accorded consistent treatment.

e. Be determined in accordance with generally accepted accounting principles.

f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.

g. Be adequately documented.

3. *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinzed with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. *Allocable costs.*

a. A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Government award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. *Applicable credits.*

a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost they shall be credited to the Government either as a cost reduction or cash refund as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

(c) For rules covering program income (i.e., gross income earned from federally supported activities) see 34 CFR 74.25.

6. *Advance understandings.* Under any given award the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

B. *Direct Costs*

1. Direct costs are those that can be identified specifically with a particular final cost objective: i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstances, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.

3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fund raising costs in paragraph 19 of Attachment B) to this Appendix. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct cost for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and

necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

a. Maintenance of membership rolls, subscriptions, publications, and related functions.

b. Providing services and information to members, legislative or administrative bodies, or the public.

c. Promotion, lobbying, and other forms of public relations.

d. Meetings and conferences except those held to conduct the general administration of the organization.

3. Maintenance, protection, and investment of special funds not used in operation of the organization.

f. Administration of group benefits on behalf of members or clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

C. *Indirect Cost*

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in paragraph B.2. above. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of costs which may be classified as indirect cost in all situations. However, typical examples of indirect cost for many nonprofit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

D. *Allocation of Indirect Costs and Determination of Indirect Cost Rates*

1. *General.*

a. Where a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in paragraph 2 below.

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fund raising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in paragraphs 2 through 5 below.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of the costs.

2. *Simplified allocation method.*

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in paragraph B.3. above.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 29 of Attachment B to this Appendix.

d. Except where a special rate(s) is required in accordance with paragraph D.5 below, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

3. *Multiple allocation base method.*

a. Where an organization's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefiting functions by means of a base which best measures the relative benefits.

b. The groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision desired.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefiting functions. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Government and the organization. In general, any cost element or cost related factor associated with the organization's work is potentially adaptable for use as an allocation base provided (i) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like) and (ii) it is common to the benefiting functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph D.5 below, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be total direct costs (excluding capital expenditures and other distorting items such as major subcontracts and subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 29 of Attachment B to this Appendix. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool.

4. *Direct allocation method.*

a. Some nonprofit organizations, treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fund raising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates shall be computed in the same manner as that described in paragraph D.2 above.

5. *Special indirect cost rates.* In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom, should be used provided it is determined that (i) the rate differs significantly from that which would have been obtained under paragraph D.2, 3, and 4 above, and (ii) the volume of work to which the rate would apply is material.

E. *Negotiation and Approval of Indirect Cost Rates.*

1. *Definitions.* As used in this section, the following terms have the meanings set forth below:

a. "Cognizant agency" means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. "Provisional rate" or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a final rate for the period.

f. "Indirect cost proposal" means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. "Cost objective" means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. *Negotiation and approval of rates.*

a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process, but after a rate has been agreed upon it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with paragraph D.5 above, it will, prior to the time the rates are negotiated, notify the cognizant agency.

b. A nonprofit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal to the cognizant agency. The proposal shall be submitted as soon as possible after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if (i) all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Government and non-government work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the nonprofit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the nonprofit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, the Office Management and Budget will lend assistance as required to resolve such problems in a timely manner.

Attachment B to Appendix B—Selected Items of Cost

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38. Publication and printing costs
39. Rearrangement and alteration costs
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41. Recruiting costs
42. Relocation costs
43. Rental costs
44. Royalties and other costs for use of patents and copyrights
45. Severance pay
46. Specialized service facilities
47. Taxes
48. Termination costs
49. Training and education costs
50. Transportation costs
51. Travel costs

Paragraphs 1 through 50 provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable: rather determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. *Advertising costs.*

a. Advertising costs mean the costs of media services and associated costs. Media advertising includes magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are soley for (i) the recruitment of personnel when considered in conjunction with all other recruitment costs, as set forth in paragraph 40; (ii) the procurement of goods and services; (iii) the disposal of surplus materials acquired in the performance of the award except when organizations are reimbursed for disposals at a predetermined amount in accordance with 34 CFR (Subpart O—Property) §§ 74.130—74.145; or (iv) specific requirements of the award.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

3. *Bid and proposal costs.* [Reserved]

4. *Bonding costs.*

a. Bonding costs arise when the financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

6. *Compensation for personal services.*

a. *Definition.* Compensation for personal services includes all compensation paid currently or accured by the organization for services of employees rendered during the period of the award (except as otherwise provided in paragraph g. below). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. *Allowability.* Except as otherwise specifically provided in this paragraph the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Government and non-Government activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. *Reasonableness.*

(1) When the organization is predominantly engaged in activities other than those sponsored by the Government, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in Government-sponsored activities and in cases where the kind of employees required for the Government activities are not found in the organization's other activities, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

e. *Unallowable costs.* Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. *Fringe benefits.*

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see paragraph g. below), and the like, are allowable provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accuring to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3)(a) provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workers' compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

g. *Pension plan costs.*

(1) Cost of the orgfanization's pension plan which are incurred in accordance with the established policies of the organizations are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under the Employee Retirement Income Security Act are unallowable.

h. *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

i. *Overtime, extra pay shift, and multishift premiums.* See paragraph 27.

j. *Severance pay.* See paragraph 44.

k. *Training and education costs.* See paragraph 48.

l. *Support of salaries and wages.*

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports as prescribed in subparagraph (2) below, except when a substitute system has been approved in writing by the cognizant agency. (See paragraph E.2 of Attachment A).

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by nonprofit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an *after-the-fact* determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2) above, must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (29 CFR Part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under the Fair Labor Standards Act.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

7. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see paragraph 6.f.(3) and 18.a.(2)(d)); pension funds (see paragraph 6.(g)); and reserves for normal severance pay (see paragraph 44.(b)(1).

8. *Contributions.* Contributions and donations by the organization to others are unallowable.

9. *Depreciation and use allowances.*

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in paragraph f. below a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquistion cost of the assest involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude.

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching retirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g. plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.) Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds percent equipment use allowance limitation.

e. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under paragraph e. above, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure the assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records

indicating the amount of depreciation taken each period also be maintained.

10. *Donations*

a. *Services received.*

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the servcies will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in 34 CFR 74.24. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) *Rates for volunteer services.* Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in the other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

(b) *Services donated by other organizations.* When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with subparagraph (a) above.

b. *Goods and space.*

(1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in 34 CFR 74.24. The value of the donations shall be determined in accordance with Attachment E. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

11. *Employee morale, health, and welfare, costs and credits.* The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see paragraphs 11 and 25).

13. *Equipment and other capital expenditures.*

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) "Equipment" means an article of nonexpendable tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. An organization may use its own definition provided that it at least includes all nonexpendable tangible personal property as defined herein.

(2) "Acquisition cost" means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be excluded in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) "Special purpose equipment" means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs provided that items with a unit cost of $5,000 or more have the prior approval of the awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 9 for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 42 for allowability of rental costs for land, buildings, and equipment.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

15. *Fringe benefits.* See paragraph 6.f.

16. *Idle facilities and idle capacity.*

a. As used in this paragraph the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) "Idle facilities" means completely unused facilities that are excess to the organization's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 per cent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multishift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) "Costs of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception

stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see paragraphs 47.b. and d.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

17. *Independent research and development* [Reserved.].

18. *Insurance and Indemnification.*

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see paragraph 6.f. and 6.g.(2)).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations.

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Government property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(e) Costs of insurance of the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see paragraph 6). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the organization only to the extent expressly provided in the award.

19. *Interest, fund raising, and investment management costs.*

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however, represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in paragraph B of Attachment A to this Appendix.

20. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

21. *Lobbying.* a. Notwithstanding other provisions of this Appendix costs associated with the following activities are unallowable:

a.(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

a.(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

a.(3) Any attempt to influence: (i) The introduction of Federal or state legislation; or (ii) the enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

a.(4) Any attempt to influence: (i) The introduction of Federal or state legislation; or (ii) the enactment or modification of any pending Federal or state legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

a.(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of subparagraph a:

b.(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

b.(2) Any lobbying made unallowable by section a.(3) to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

b.(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c.(1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of paragraph E3 of Attachment A.

c.(2) Organizations shall submit as part of their annual indirect cost rate proposal a certification that the requirements and standards of this paragraph have been complied with.

c.(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to paragraph B21 complies with the requirements of this Appendix.

c.(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this section during any particular calendar month when: (1) the employee engages in lobbying (as defined in paragraphs (a) and (b) above) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) above are met, organizations are

not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) above are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

c.(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of paragraph B21. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Appendix; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

22. *Losses on other awards.* Any excess of costs over income on any award is unallowable as a cost any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any underrecoveries through negotiation of lump sums for, or ceilings on, indirect costs.

23. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 13).

24. *Materials and supplies.* The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

25. *Meetings, conferences.*

a. Costs associated with the conduct of meetings and conference, include the cost of renting facilities, meals, speakers' fees, and the like. But see paragraph 12, *Entertainment costs,* and paragraph 30, *Participant support costs.*

b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective. (See paragraph B. of Attachment A.) to this Appendix. These costs are allowable provided that they meet the general tests of allowability, shown in Attachment A to this Appendix.

c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

28. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the organization's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the organization's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of attendance at meetings and conferences sponsored by others when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, and other items incidental to such attendance.

27. *Organization costs.* Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

28. *Overtime, extra-pay shift, and multishift premiums.* Premiums for overtime, extra-pay shifts, and multishift work are allowable only with the prior approval of the awarding agency except:

a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

b. When employees are performing indirect functions such as administration, maintenance, or accounting.

c. In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

d. When lower overall cost to the Government will result.

29. *Page charges in professional journals.* Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by Government-sponsored authors.

30. *Participant support costs.* Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

31. *Patent costs.*

a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extent necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Government to be conveyed to the Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see paragraph 35).

b. Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Government, are unallowable (also see paragraph 44).

32. *Pension plans.* See paragraph 6. g.

33. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements or for facilities protection, including wages, uniforms, and equipment of personnel are allowable.

34. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

35. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to b, c, and d of this paragraph when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Government awards.

(4) The impact of Government awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Government work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Government awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in paragraph b above, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

d. Cost of legal, accounting, and consulting services, and related costs incurred in connection with defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, organization and reorganization, are unallowable unless otherwise provided for in the award (but see paragraph 48e).

36. *Profits and losses on disposition of depreciable property or other capital assets.*

a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions.

(a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under paragraph 9.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in paragraph 18.a. (3).

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph a. above shall be excluded in computing award costs.

37. *Public information service costs.*

a. Public information service costs include the cost associated with pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(1) Inform or instruct individuals, groups, or the general public.

(2) Interest individuals or groups in participating in a service program of the organization.

(3) Disseminate the results of sponsored and nonsponsored activities.

b. Public information service costs are allowable as direct costs with the prior approval of the awarding agency. Such costs are unallowable as indirect costs.

38. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

b. If the costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.

d. The cost of page charges in journals is addressed in paragraph 29.

39. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

40. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Government awards, fair wear and tear excepted, are allowable.

41. *Recruiting costs.* The following recruiting costs are allowable: cost of "help wanted" advertising, operating costs of an employment office, costs of operating an educational testing program, travel expenses including food and lodging of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees (see paragraph 42c). Where the organization uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

42. *Relocation costs.*

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in paragraphs b, c, and d, below, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4) below, are limited to 8 percent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necesasry and reasonable expenses normally incident to relocation, such as the cost of cancelling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of cancelling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in (1) and (2) of paragraph b. above. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 51 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

43. *Rental costs.*

a. Subject to the limitations described in paragraphs b. through d. of this paragraph, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.

c. Rental costs under less-than-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through

corporations, trusts, or similar arrangements in which they hold a controlling interest.

d. Rental costs under leases which create a material equity in the leased property are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed; e.g., depreciation or use allowances, maintenance, taxes, insurance but excluding interest expense and other unallowable costs. For this purpose, a material equity in the property exists if the lease in noncancelable or is cancelable only upon the occurrence of some remote contingency and has one or more of the following characteristics:

(1) The organization has the right to purchase the property for a price which at the beginning of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option);

(2) Title to the property passes to the organization at some time during or after the lease period;

(3) The term of the lease (initial term plus periods covered by bargain renewal options, if any) is equal to 75 percent or more of the economic life of the leased property; i.e., the period the property is expected to be economically usable by one or more users.

44. *Royalties and other costs for use of patents and copyrights.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's-length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

45. *Severance pay.*

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

46. *Specialized service facilities.*

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic computers and wind tunnels, are allowable provided the charges for the services meet the conditions of either b. or c. of this paragraph and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under paragraph A.5. of Attachment A to this Appendix.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to paragraph A.6. of Attachment A to this Appendix are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

47. *Taxes.*

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Government and in the latter case when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Government.

48. *Termination costs.* Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Appendix in termination situations.

a. *Common items.* The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Appendix, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. *Loss of useful value.* Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency;

d. *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default. (See 34 CFR 74.43); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced for the award; except when grantees are reimbursed for disposals at a predetermined amount in accordance with 34 CFR (Subpart O property) §§ 74.130–74.145.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs (1) and (2) of this paragraph. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. *Claims under subawards.* Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractor/subgrantees; provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A to this Appendix. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

49. *Training and education costs.*

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or postgraduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a postgraduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in b. and c. above.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 9, 23, and 43.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under paragraphs b. and c. of this paragraph may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

50. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see paragraph 24). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

51. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to paragraphs b. through e. below, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to paragraphs 41 and 42, subject to allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located in foreign countries, the term "foreign travel" means travel outside that country.

Attachment C to Appendix B—Nonprofit Organizations not Subject to this Appendix

Aerospace Corporation, El Segundo, California
Argonne Universities Association, Chicago, Illinois
Associated Universities, Incorporated, Washington, D.C.
Associated Universities for Research and Astronomy, Tucson, Arizona
Atomic Casualty Commission, Washington, D.C.
Battelle Memorial Institute, Headquartered in Columbus, Ohio
Brookhaven National Laboratory, Upton, New York
Center for Energy and Environmental Research (CEER), (University of Puerto Rico) Commonwealth of Puerto Rico
Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
Comparative Animal Research Laboratory (CARL)
(University of Tennessee), Oak Ridge, Tennessee
Environmental Institute of Michigan, Ann Arbor, Michigan
Hanford Environmental Health Foundation, Richland, Washington
IIT Research Insititute, Chicago, Illinois

Institute for Defense Analysis, Arlington, Virginia
Institute of Gas Technology, Chicago, Illinois
Midwest Research Institute, Headquartered in Kansas City, Missouri
Mitre Corporation, Bedford, Massachusetts
Montana Energy Research and Development Institute, Inc., (MERDI), Butte, Montana
National Radiological Astronomy Observatory, Green Bank, West Virginia
Oak Ridge Associated Universities, Oak Ridge, Tennessee
Project Management Corporation, Oak Ridge, Tennessee
Rand Corporation, Santa Monica, California
Research Triangle Institute, Research Triangle Park, North Carolina
Riverside Research Institute, New York, New York
Sandia Corporation, Albuquerque, New Mexico
Southern Research Institute, Birmingham, Alabama
Southwest Research Institute, San Antonio, Texas
SRI International, Menlo Park, California
Syracuse Research Corporation, Syracuse, New York
Universities Research Association.
Incorporated (National Acceleration Lab), Argonne, Illinois
Universities Corporation for Atmospheric Research, Boulder, Colorado
Nonprofit Insurance Companies such as Blue Cross and Blue Shield Organizations
Other nonprofit organizations as negotiated with awarding agencies.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circulars A–102, A–110, and A–122)

j. Appendix C to Part 74 is added, to read as follows:

Appendix C to Part 74—Cost Principles for Educational Institutions (OMB Circular A–21)

Table of Contents

A. *Purpose and Scope*

1. *Objective.* This Appendix provides principles for determining the costs applicable to research and development, training, and other sponsored work performed by colleges and universities under grants, contracts, and other agreements with the Federal Government. These agreements are referred to as sponsored agreements.

2. *Policy guides.* The successful application of these cost accounting principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for Federal agency and institutional participation in the financing of a research, training, or other project are properly subject to negotiation between the agency and the institution concerned, in accordance with such Government-wide criteria or legal requirements as may be applicable.

b. Each institution, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives.

c. The dual role of students engaged in research and the resulting benefits to sponsored agreements are fundamental to the research effort and shall be recognized in the application of these principles.

d. Each institution, in the fulfillment of its obligations, should employ sound management practices.

e. The application of these costs accounting principles should require no significant changes in the generally accepted accounting practices of colleges and universities. However, the accounting practices of individual colleges and universities must support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to sponsored agreements.

f. Cognizant Federal agencies involved in negotiating indirect cost rates and auditing should assure that institutions are generally applying these cost accounting principles on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments should be fully considered during the rate negotiations and audit.

3. *Application.* These principles shall be used in determining the allowable costs of work performed by colleges and universities under sponsored agreements. The principles shall also be used in determining the costs of work performed by such institutions under subgrants, cost-reimbursement subcontracts, and other awards made to them under sponsored agreements. They also shall be used as a guide in the pricing of fixed-price contracts and subcontracts where costs are

used in determining the appropriate price. The principles do not apply to:

a. Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees of an institution.

b. Capitation awards.

c. Other awards under which the institution is not required to account to the Government for actual costs incurred.

B. *Definition of Terms*

1. *Major functions of an institution* refers instruction, organized research, other sponsored activities, and other institutional activities as defined below:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in c. below, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a noncredit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) University research means all research and development activities that are separately budgeted by the institution under an internal application of institutional funds. University research, for purposes of this document, may be considered a part of the instruction function, or may be combined with sponsored research under the function, of organized research, or may be treated as a separate major function, as agreed to with the cognizant agency.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects, and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except: (1) instruction, departmental research, organized research, and other sponsored activities, as defined above; (2) indirect cost activities identified in Section F, and (3) specialized service facilities described in Section J38. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartment, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

d. *Other institutional activities* means all activities of an institution except: (1) instruction, departmental research, organized research, and other sponsored activities, as defined above; (2) indirect cost activities identified in Section F, and (3) specialized service facilities described in Section J38. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartment, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

2. *Sponsored agreement*, for purposes of this circular, means any grant, contract, or other agreement between the institution and the Federal Government.

3. *Allocation* means the process of assigning a cost, or a group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship. A cost objective may be a major function of the institution, a particular service or project, a sponsored agreement, or an indirect cost activity, as described in Section F. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate costs objectives.

C. *Basic Considerations*

1. *Composition of total costs.* The cost of a sponsored agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in 5 below.

2. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are: (a) they must be reasonable; (b) they must be allocable to sponsored agreements under the principles and methods provided herein; (c) they must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types and amounts or costs items.

3. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (a) whether or not the cost is of a type generally recognized as necessary for the operation of the institution of the performance of the sponsored agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and sponsored agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, it employees, its students, the Government, and the public at large; and (d) extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including sponsored agreements.

4. *Allocable costs.*

a. A cost is allocable to a particular cost objective (i.e., a specific function, project, sponsored agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a sponsored agreement if (1) it is incurred solely to advance the work under the sponsored agreement; (2) its benefits both the sponsored agreement and other work of the institution, in proportions that can be approximated through use of reasonable methods, or (3) it is necessary to the overall operation of the institution and, in light of the principles provided in this Appendix, is deemed to be assignable in part to sponsored projects. Where the purchase of equipment or other capital items is specifically authorized under a sponsored agreement, the amounts thus authorized for such purchases are assignable to the sponsored agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular sponsored agreement under the standards provided in this Appendix may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the sponsored agreement, or for other reasons of convenience.

5. *Applicable credits.*

a. The term applicable credits refers to those receipts or negative expenditures that operate to offset or reduce direct or indirect cost items. Typical examples of such transactions are: purchase discounts, rebates,

or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. This term also includes "educational discounts" on products or services provided specifically to educational institutions, such as discounts on computer equipment, except where the arrangement is clearly and explicitly identified as a gift by the vendor.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to sponsored agreements for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See Sections F8, J9a. and J38 for areas of potential application in the matter of direct Federal financing.)

6. *Costs incurred by State and local governments.* Costs incurred or paid by State or local governments on behalf of their colleges and universities for fringe benefit programs such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the institutions are allowable costs of such institutions whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

a. The costs meet the requirements of C1 through 5 above.

b. The costs are properly supported by cost allocation plans in accordance with applicable Federal cost accounting principles

c. The costs are not otherwise borne directly or indirectly by the Federal Government.

7. *Limitations on allowance costs.* Sponsored agreements may be subject to statutory requirements that limit the allowance of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this Appendix, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements.

D. *Direct Costs*

1. *General.* Direct costs are those costs that can be identified specifically with a particular sponsored project, and instructional activity, or any other institutional activity; or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

2. *Application to sponsored agreements.* Identification with the sponsored work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of sponsored agreements. Typical costs charged directly to a sponsored agreement are the compensation of employees for performance of work under the sponsored agreement, including related fringe benefit costs to the extent they are consistently treated, in like circumstances, by the institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of the work; and other items of expense incurred for the sponsored agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of sponsored agreements, provided such items are consistently treated, in like circumstances, by the institution as direct rather than indirect costs, and are charged under a recognized method of computing actual costs, and conform to generally accepted cost accounting practices consistently followed by the institution.

E. *Indirect Costs*

1. *General.* Indirect costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, and instructional activity, or any other institutional activity. At educational institutions such costs normally are classified under the following indirect cost categories: depreciation and use allowances, general administration expenses, sponsored projects administration expenses, operation and maintenance expenses, library expenses, departmental administration expenses, and student administration and services.

2. *Criteria for distribution.*

3. *Base period.* A base period for distribution of indirect costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect cost allocation process is to distribute the indirect costs described in Section F to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect cost categories referred to in E1 above. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in c below. Each such pool or cost grouping should then be distributed individually to the related cost objectives, used the distribution base or method most appropriate in the light of the guides set forth in d below.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within an indirect cost category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in E2b and d.

(2) Where any types of expense ordinarily treated as general administration or departmental administration are charged to sponsored agreements as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect costs allocable to those sponsored agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) Where activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat fringe benefits as indirect charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.*

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

(2) Where a cost grouping can be identified directly with the cost objective benefited, it should be assigned to that cost objective.

(3) Where the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if approporiate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the costs to the related cost objectives in accordance with

the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than every two years, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution shall be made in accordance with the appropriate base cited in Section F., unless one of the following conditions is met: (a) it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored agreements, or (b) the institution qualifies for, and elects to use, the simplified method for computing indirect cost rates described in Section H.

e. *Order of Distribution.*

(1) Indirect cost categories consist of depreciation and use allowance, operation and maintenance, general administration and general expenses, departmental administration, sponsored projects administration, library , and student administration and services, as described in Section F.

(2) Depreciation and use allowances, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in (3) below, this order of allocation does not apply.

(3) Normally an indirect cost category will be considered closed once it has been allocated to their cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of cost between two or more indirect cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories described in Section F is required.

F. Identification and Assignment of Indirect Costs

1. *Depreciation and use allowances.*

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with Section J9.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated in the following manner:

(1) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(2) Depreciation or use allowances on buildings, used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwell, and restrooms.

(3) Depreciation or use allowances on buildings and capital improvements where space is used jointly, and on equipment used jointly, shall be allocated to benefiting functions in proportion to the total salaries and wages applicable to the joint functions.

(4) Depreciation or use allowances on buildings, capital improvements, and equipment used predominantly for one function and only incidentally for other(s), may be assigned to the function in which it is used predominantly.

(5) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of students and employees of a full-time equivalent basis. The amount allocated to the student category shall be assigned to the instruction functions of the institution. The amount allocated to the employee category shall be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

2. *Operation and maintenance expenses.*

a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; and care of grounds and maintenance and operation of buildings and other plant facilities. The operation and maintenance expenses category should also include the fringe benefit costs applicable to the salaries and wages included therein, and depreciation and use allowance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated in the same manner as described in Section F1b for depreciation and use allowances.

3. *General administration and general expenses.*

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of operation and maintenance expense, and depreciation and use allowances.

General administration and general expenses shall not include expenses incurred within nonuniversity-wide deans' offices, academic departments, organized research units, or similar organizational units. (See section F.4., departmental administration expenses.)

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be grouped first, according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to serviced or benefited functions on the modified total cost basis. Modified total costs consist of salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to $25,000 each. When an activity included in this indirect cost category provides a service or product to another institution or organization, and appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

4. *Departmental administration expenses.*

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including departmental heads), and other professional personnel conducting research and/or instruction, shall be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance shall be added to the computation of the indirect cost rate for major functions in section G; the expenses covered by the allowance shall be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in (1) and (2) above are allowable, as well as an appropriate share of general administration and general expenses, operation and

maintenance expenses, and depreciation and/or use allowances.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school shall be allocated in the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in (1) above shall be allocated to the appropriate functions of the department on the modified total cost basis.

5. *Sponsored projects administration.*

(a) The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal) special security, purchasing, personnel administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, stenographic pools and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation/use allowances. Appropriate adjustments will be made for services provided to other functions or organizations.

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment shall be made to eliminate any duplicate charges to sponsored agreements when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect cost items, such as accounting, procurement, or personnel administration.

6. *Library expenses.*

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under Section C5. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation and use allowances. Costs incurred in the purchases of rare books (museum-type books) with no value to sponsored agreements should not be allocated to them.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category shall consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category shall consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis.

(3) The other users category shall consist of all other users of library facilities.

c. Amounts allocated in b above shall be assigned further as follows: (1) The amount in the student category shall be assigned to the instruction function of the institution.

(2) The amount in the professional employee category shall be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category shall be assigned to the other institutional activities function of the institution.

7. *Student administration and services.*

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations.

The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to Student Administration is determined in accordance with Section J.6. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, and use allowances and/or depreciation.

b. In the absence of the alternatives provided for in Section E2d, the expenses in this category shall be allocated to the instruction function, and subsequently to sponsored agreements in that function.

8. *Offset for indirect expenses otherwise provided for by the Government.*

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in F1 through 7 above.

b. The items in this group shall be treated as a credit to the affected individual indirect cost category before that category is allocated to benefiting functions.

G. *Determination and Application of Indirect Cost Rate or Rates*

1. *Indirect cost pools.*

a. Subject to b below, the separate categories of indirect costs allocated to each major function of the institution as prescribed in Section f shall be aggregated and treated as a common pool for that function. The amount in each pool shall be divided by the distribution base described in G2 below to arrive at a single indirect cost rate for each function. The rate for each function is used to distribute indirect costs to individual sponsored agreements of that function. Since a common pool established for each major function of the institution, a separate indirect cost rate would be established for each of the major functions described in Section B1 under which sponsored agreements are carried out.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group or sponsored agreement performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangments used, or any combination thereof. Where a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the regular course of the rate determination process and the separate indirect cost rate resulting therefrom should be utilized; provided it is determined that (1) such indirect cost rate differs significantly from that which would have been obtained under a. above, and (2) the volume of work to which such rate would apply is material in relation to other sponsored agreements at the institution.

2. *The distribution basis.* Indirect costs shall be distributed to applicable sponsored agreements on the basis of modified total direct costs, consisting of salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to $25,000 each. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to G1, above. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the modified total direct costs identified with such pool. Other bases may be used where it can be demonstrated that they produce more equitable resutls.

3. *Negotiated lump sum for indirect costs.* A negotiated fixed amount in lieu of indirect

costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect services cannot be readily determined. Such negotiated indirect costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. *Predetermined fixed rates for indirect costs.* Public Law 87–638 (76 Stat. 437) authorizes the use of predetermined fixed rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting period.

5. *Negotiated fixed rates and carry-forward provisions.* When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for the year may be included as a adjustment to the indirect cost for the next rate negotiation. When the rate is nogotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to sponsored agreements for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements of cost-sharing provisions or prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change, without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

H. Simplified Method for Small Institutions

1. *General.*

a. Where the total direct cost of work covered by this Appendix at a institution does not exceed $3,000,000 in a fiscal year, the use of the simplified procedure described in 2, below, may be used in determining allowable indirect costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable to all sponsored agreements.

b. The simplified procedure should not be used where it produces results which appear inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular prcedure.

2. *Simplified procedure.*

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses [exclusive of cost of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under (1) above have previously been allocated to other institutional activities, they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in a above the amount of salaries and wages included under b above.

d. Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool, b above, by the amount of the distribution base, c above.

e. Apply the indirect cost rate to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

J. General Provisions for Selected Items of Cost

Sections 1 through 44 below provide principles to be applied in establishing the allowability of certain items involved in determining cost. These principles should apply irrespective of whether a particular item of costs is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific sponsored agreement and the provisions below, the agreement shoud govern.

1. *Advertising costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are solely for: (1) The recruitment of personnel required for the performance by the institution of obligations arising under the sponsored agreement, when considered in conjunction with all other recruitment costs, as set forth in Section J32; (2) the procurement of goods and services for the performance of the sponsored agreement; (3) the disposal of scrap or surplus materials acquired in the performance of the sponsored agreement except when institutions are reimbursed for disposal costs at a predetermined amount in accordance with 34 CFR (Subpart 0–Property) §§ 74.130–74.145; or (4) other specific purposes necessary to meet the requirements of the sponsored agreement.

c. Costs of this nature, if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in Sections D and E.are observed.

2. *Bad debts.* Any losses, whether actual or estimated, arising from uncollectible accounts and other claims, related collections costs, and related legal costs, are unallowable.

3. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institutions' premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in Section J9. Costs of local civil defense projects not on the institution's premises are unallowable.

4. *Commencement and convocation costs.* Costs incurred for commencements and convocations are unallowable, except as provided for in Section F7.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

6. Compensation for personal services

a. *General.* Compensation for personal services covers all amounts paid currently or accrued by the institution for services of employees rendered during the period of performance under sponsored agreements. Such amounts include salaries, wages, and fringe benefits (See Section J15.) These costs are allowable to the extent that the total

compensation to individual employees conforms to the established policies of the institution, consistently applied, and provided that the charges for work performed directly on sponsored agreements and for other work allocable as indirect costs are determined and supported as provided below. Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. Incidental work (that in excess of normal for the individual), for which supplemental compensation is paid by an institution under institutional policy, need not be included in the payroll distribution systems described below, provided such work and compensation are separately identified and documented in the financial management system of the institution.

b.(1) *General Principles.* (a) The distribution of salaries and wages whether treated as direct or indirect costs, will be based on payrolls documented in accordance with the generally accepted practices of colleges and universities. Institutions may include in a residual category all activities that are not directly charged to sponsored agreements, and that need not be distributed to more than one activity for purposes of identifying indirect costs and the functions to which they are allocable. The components of the residual category are not required to be separately documented.

(b) The apportionment of employee's salaries and wages which are chargeable to more than one sponsored agreement or other cost objective will be accomplished by methods which will (1) be in accordance with Sections A–2 and C above, (2) produce an equitable distribution of charges for employee's activities, and (3) distinguish the employee's direct activities from their indirect activities.

(c) In the use of any methods for apportioning salaries, it is recognized that, in an academic setting, teaching, research, service, and administration are often inextricably intermingled. A precise assessment of factors that contribute to costs is not always feasible, nor is it expected. Reliance, therefore, is placed on estimates in which a degree of tolerance is appropriate.

(d) There is no single best method for documenting the distribution of charges for personal services. Methods for apportioning salaries and wages, however, must meet the criteria specified in J.6.b.(2) below. Examples of acceptable methods are contained in J.6.c. below. Other methods which meet the criteria specified in J.6.b.(2) below also shall be deemed acceptable, if a mutually satisfactory alternative agreement is reached.

(2) *Criteria for Acceptable Methods.* (a) The payroll distribution system will (i) be incorporated into the official records of the institution, (ii) reasonably reflect the activity for which the employee is compensated by the institution, and (iii) encompass both sponsored and all other activities on an integrated basis, but may include the use of subsidiary records. (Compensation for incidental work described in J.6.a. need not be included.)

(b) The method must recognize the principle of after-the-fact confirmation or determination so that costs distributed represent actual costs, unless a mutually satisfactory alternative agreement is reached. Direct cost activities and indirect cost activities may be confirmed by responsible persons with suitable means of verification that the work was performed. Confirmation by the employee is not a requirement for either direct or indirect cost activities if other responsible persons make appropriate confirmations.

(c) The payroll distribution system will allow confirmation of activity allocable to each sponsored agreement and each of the categories of activity needed to identify indirect costs and the functions to which they are allocable. The activities chargeable to indirect cost categories or the major functions of the institution for employees whose salaries must be apportioned (see J.6.b.1.(b) above). If not initially identified as separate categories, may be subsequently distributed by any reasonable method mutually agreed to, including, but not limited to, suitably conducted surveys, statistical sampling procedures, or the application of negotiated fixed rates.

(d) Practices vary among institutions and within institutions as to the activity constituting a full workload. Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.

(e) Direct and indirect charges may be made initially to sponsored agreements on the basis of estimates made before services are performed. When such estimates are used significant changes in the corresponding work activity must be identified and entered into the payroll distribution system. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period.

(f) The system will provide for independent internal evaluations to ensure the system's effectiveness and compliance with the above standards.

(g) For systems which meet these standards, the institution will not be required to provide additional support or documentation for the effort actually performed.

c. *Examples of Acceptable Methods for Payroll Distribution:*

(1) *Plan—Confirmation:* Under this method, the distribution of salaries and wages of professorial or professional staff applicable to sponsored agreements is based on budgeted, planned, or assigned work activity, updated to reflect any significant changes in work distribution. A plan-confirmation system used for salaries and wages charged directly or indirectly to sponsored agreements will meet the following standards:

(a) A system of budgeted, planned, or assigned work activity will be incorporated into the official records of the institution and encompass both sponsored and all other activities on an integrated basis. The system may include the use of subsidiary records.

(b) The system will reasonably reflect only the activity for which the employee is compensated by the institution (compensation for incidental work described in J.6.a. need not be included). Practices vary among institutions and within institutions as to the activity constituting a full workload. Hence, the system will reflect categories of activities expressed as a percentage distribution of total activities. (But see Section H for treatment of indirect costs under the simplified method for small institutions.)

(c) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable. The system may treat indirect cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in J.6.b.(2)(c).

(d) The system will provide for modification of an individual's salary or salary distribution commensurate with an significant change in the employee's work activity. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term such as an academic period. Whenever it is apparent that a significant change in work activity which is directly or indirectly charged to sponsored agreements will occur or has occurred, the change will be documented over the signature of a responsible official and entered into the system.

(e) At least annually a statement will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed, stating that salaries and wages charged to sponsored agreements as direct charges, and to residual, indirect cost or other categories are reasonable in relation to work performed.

(f) The system will provide for independent internal evaluation to ensure the system's integrity and compliance with the above standards.

(g) In the use of this method, an institution shall not be required to provide additional support or documentation for the effort actually performed.

(2) *After-the-fact Activity Records:* Under this system the distribution of salaries and wages by the institution will be supported by activity reports as prescribed below.

(a) Activity reports will reflect the distribution of activity expended by employees covered by the system (compensation for incidental work as described in J.6.a. need not be included).

(b) These reports will reflect an after-the-fact reporting of the percentage distribution of activity of employees. Charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences are indicated by activity records.

(c) Reports will reasonably reflect the activities for which employees are

compensated by the institution. To confirm that the distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the reports will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed.

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable. The system may treat indirect cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in J.6.b.(2)(c).

(e) For professorial and professional staff, the reports will be prepared each academic term, but no less frequently than every six months. For other employees, unless alternate arrangements are agreed to, the reports will be prepared no less frequently than monthly and will coincide with one or more pay periods.

(f) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose provided that they meet the requirements in (a) through (e) above.

(3) *Multiple Confirmation Records;* Under this system the distribution of salaries and wages of professorial and professional staff will be supported by records which certify separately for direct and indirect cost activities as prescribed below.

(a) For employees covered by the system, there will be direct cost records to reflect the distribution of that activity expended which is to be allocable as direct cost to each sponsored agreement. There will also be indirect cost records to reflect the distribution of that activity to indirect costs. These records may be kept jointly or separately (but are to be certified separately see below).

(b) Salary and wage charges may be made initially on the basis of estimates made before the services are performed provided that such charges are promptly adjusted if significant differences occur.

(c) Institutional records will reasonably reflect only the activity of which employees are compensated by the institution (compensation for incidental work as described in J.6.a. need not be included).

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable.

(e) To confirm that distribution of activity represents a reasonable estimate of the work performed by the employee during the period the record for each employee will include:

(1) The signature of the employee or of a person having direct knowledge of the work, confirming that the record of activities allocable as direct costs of each sponsored agreement is appropriate.

(2) The record of indirect costs will include the signature of responsible person(s) who use suitable means of verification that the work was performed and is consistent with the overall distribution of the employee's compensated activities.

These signatures may all be on the same document.

(f) The reports will be prepared each academic term, but no less frequently than every six months.

(g) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose provided they meet the requirements in (a) through (f) above.

d. *Salary rates for faculty members.*

(1) *Salary rates for academic year.* Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. This principle applies to all members of the faculty at an institution. Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.

(2) *Periods outside the academic year.*

(a) Except as otherwise specified for teaching activity in (b) below, charges for work performed by faculty members on sponsored agreements during the summer months or other period not included in the base salary period will be determined for each faculty member at a rate not in excess of the base salary divided by the period to which the base salary relates, and will be limited to charges made in accordance with other parts of this section. The base salary period used in computing charges for work performed during the summer months will be the number of months covered by the faculty member's official academic year appointment.

(b) Charges for teaching activities performed by faculty members on sponsored agreements during the summer months or other periods not included in the base salary period will be based on the normal policy of the institution governing compensation to faculty members for teaching assignments during such periods.

(3) *Part-time faculty.* Charges for work performed on sponsored agreements by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for the part-time assignments; e.g., an institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time to a sponsored agreement. Thus, his additional compensation, chargeable by the institution to the agreement, would be one-half of $5,000, or $2,500.

e. *Noninstitutional professional activities.* Unless an arrangement is specifically authorized by a Federal sponsoring agency, an institution must follow its institution-wide policies and practices concerning the permissible extent of professional services that can be provided outside the institution for noninstitutional compensation. Where such institution-wide policies do not exist or do not adequately define the permissible extent of consulting or other noninstitutional activities undertaken for extra outside pay, the Government may require that the effort of professional staff working on sponsored agreements be allocated between (1) institutional activities, and (2) noninstitutional professional activities. If the sponsoring agency considers the extent of noninstitutional professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

7. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events, the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. (But see also Section J16c.)

8. *Deans of faculty and graduate schools.* The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

9. *Depreciation and use allowances.* Institutions may be compensated for the use of their buildings, capital improvements, and equipment; provided that they are used, needed in the institutions' activities, and properly allocable to sponsored agreements. Such compensation shall be made by computing either depreciation or use allowance. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not computed. The allocation for depreciation or use allowance shall be made in accordance with Section F1. Depreciation and use allowances are computed applying the following rules:

a. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. For this purpose, the acquisition cost will exclude: (1) The cost of land; (2) any portion of the cost of buildings and equipment borne by or donated by the Government, irrespective of where title was originally vested or where it is presently located; and (3) any portion of the cost of buildings and equipment contributed by or for the institution where law or agreement prohibit recovery. For an asset donated to the institution by a third party, its fair market value at the time of the donation shall be considered as the acquisition cost.

b. In the use of the depreciation method, the following shall be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straightline method shall be presumed to be the appropriation method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency.

(3) Where the depreciation method is introduced for application to assets for which use allowance was previously charged, the aggregate amount of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets.

(4) When the depreciation method is used for buildings, a building "shell" may be treated separately from other building components, such as plumbing system and heating and air conditioning system. Each component item may then be depreciated over its estimate useful life. On the other hand, the entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life.

(5) Where the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that have outlived their depreciable lives. (But see also c(3), below.)

c. Under the use allowance method, the following shall be observed:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed as an annual rate not exceeding six and two-thirds percent of acquisition cost.

(2) In contrast to the depreciation method, the entire building must be treated as a single asset without separating its "shell" from other building components under the use allowance method. The entire building must be treated as a single asset, and the two-percent use allowance limitation must be applied to all parts of the building. The two-percent limitation, however, need not be applied to equipment or other assets that are merely attached or fastened to the building but not permanently fixed and are used as furnishings, decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, and carpeting). Such equipment and assets will be considered as not being permanently fixed to the building if they can be removed without the need for costly or extensive alterations or repairs to the building to make the space usable for other purposes. Equipment and assets which meet these criteria will be subject to the six and two-thirds percent equipment use allowance.

(3) A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

d. Except as otherwise provided in b and c above, a combination of the depreciation and use allowance methods may not be used, in like circumstances, for a single class of assets (e.g., buildings, office equipment, and computer equipment).

e. Charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, when the depreciation method is used, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

10. *Donated services and property.* The value of donated services and property are not allowable either as a direct or indirect cost, except that depreciation or use allowances on donated assets are permitted in accordance with Section J9a. The value of donated services and property may be used to meet cost sharing or matching requirements, in accordance with 34 CFR 74.24.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, employees, counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

13. *Equipment and other capital expenditures.*

a. For purposes of this paragraph, the following definitions apply:

(1) *Equipment* means an artice of nonexpendable tangible personal property having a useful life of more than one year, and an acquisition cost of $5,000 or more per unit. However, consistent with institutional policy, lower limits may be established.

(2) *Capital expenditure* means the cost of the asset including the cost to put it in place. Capital expenditure for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes duty, protective intransit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the institution's regular accounting practices.

(3) *Special purpose equipment means* equipment which is used only for research, medical, scientific, or other technical activities.

(4) *General purpose equipment* means equipment, the use of which is not limited only to research, medical, scientific or other technical activities. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and the land are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(2) Capital expenditures for special purpose equipment are allowable as direct charges, provided that the acquisition of items having a unit cost of $5,000 or more is approved in advance by the sponsoring agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(4) Capital expenditures are unallowable as indirect costs. But see Section J9 for allowability of depreciation or use allowance on buildings, capital improvements, and equipment. Also see Section J33 for allowability of rental costs on land, buildings, and equipment.

14. *Fines and penalties.* Costs resulting from violations of or failure of the institution to comply with Federal, State, and local laws and regulations are allowable, except when incurred as a result of compliance with specific provisions of the sponsoring agreement, or instructions in writing from the contracting officer or equivalent.

15. *Fringe benefits.*

a. Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable, provided such costs are distributed to all institutional activities in proportion to the relative amount of time or effort actually devoted by the employees, see Section J35 for treatment of sabbatical leave.

b. Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, tuition or remission of tuition for individual employees or their families and the like are allowable, provided such benefits are granted in accordance with

established institutional policies, and are distributed to all institutional activities on an equitable basis. See Section J36b for treatment of tuition remission provided to students.

c. Rules for pension plan costs are as follows:

(1) Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided (a) such policies meet the test of reasonableness: (b) the methods of cost allocation are equitable for all activities; (c) the amount of pension cost assigned to each fiscal year is determined in accordance with (2) below; and (d) the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year.

(2) The amount of pension cost assigned to each fiscal year shall be determined in accordance with generally accepted accounting principles. Institutions may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Cost" (4 CFR Part 412).

(3) Premiums paid for pension plan termination insurance pursuant to the Employee Retirement Income Security Act of 1974 (Public Law 93–406) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and prohibited transactions of pension plan fiduciaries imposed under the Employee Retirement Income Security Act are also unallowable.

d. Fringe benefit may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of the salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, if the costs in relationship to salaries and wages differ significantly from different groups of employees. Also fringe benefits related to institutional salaries and wages treated as direct costs may be treated as direct costs.

16. *Insurance and indemnification.*

a. Costs of insurance required or approved, and maintained, pursuant to the sponsored agreement, are allowable.

b. Cost of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice: (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable, except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an empoloyee plan which is not unduly restricted.

c. Contributions to a reserve for a self-insurance program are allowable, to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (whether through purchased insurance or self-insurance) are unallowable, unless expressly provided for in the sponsored agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided for in the sponsored agreement, except as provided in d above.

17. *Interest, fund raising, and investment management costs.*

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however, represented, are unallowable, except as indicated in e below.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

c. Cost of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

e. The cost of interest paid to an external party is allowable where associated with the following assets, provided the assets are used in support of sponsored agreements, and the total cost (including depreciation or use allowances, operation and maintenance costs, interest etc.,) does not exceed the rental cost of comparable assets in the same locality.

(1) Buildings acquired or completed on or after July 1, 1982.

(2) Major reconstruction and remodeling of existing buildings completed on or after July 1, 1982.

(3) Acquisition or fabrication of capital equipment (as defined in paragraph J.13, "Equipment and other capital expenditures") completed on or after July 1, 1982, costing $10,000 or more, if agreed to by the Government.

18. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including cost of labor management committees, employees' publications, and other related activities, are allowable.

19. *Losses on other sponsored agreements or contracts.* Any excess of costs over income under any other sponsored agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contribution portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs.

20. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair or upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

21. *Material costs.* Costs incurred for purchased materials, supplies, and fabricated parts directly or indirectly related to the sponsored agreements, are allowable. Purchases made specifically for the sponsored agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the sponsored agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the sponsored agreement. Where Government-donated or furnished material is used in performing the sponsored agreement such material will be used without charge.

22. *Memberships, subscriptions and professional activity costs.*

a. Costs of the institution's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

23. *Patent costs.* Costs of preparing disclosures, reports, and other documents required by the sponsored agreement, and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the sponsored agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also Section J34.)

24. *Plant security costs.* Necessary expenses incurred to comply with security requirements, including wages, uniforms and equipment of personnel engaged in plant protection, are allowable.

25. *Preagreement costs.* Costs incurred prior to the effective date of the sponsored agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless approved by the sponsoring agency.

26. *Professional service costs.*

a. Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable, subject to b and c below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

Retainer fees to be allowable must be reasonable supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of sponsored agreements; (2) the impact of sponsored agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4) whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the costs, particularly where the services rendered are not of a continuing nature and have little relationship to work under sponsored agreements.

c. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

27. *Profits and losses on disposition of plant equipment or other capital assets.* Profits or losses arising from the sale or exchange of plant, facilities, equipment or other capital assets, including sale or exchange of either short-term or long-term investments, shall not be considered in computing the costs of sponsored agreements except for pension plans as provided in Section J15c. When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with 34 CFR (Subpart O—Property) §§ 74.130–74.145.

28. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential Government and nongovernment sponsored agreements or projects, including the development of data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable to the current period. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

29. *Public information services costs.* Cost of news releases pertaining to specific research or scientific accomplishment are allowable, when they result from performance of sponsored agreements.

30. *Rearrangement and alteration costs.* Cost incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency.

31. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of a sponsored agreement, fair wear and tear excepted, are allowable.

32. *Recruiting costs.*

a. Subject to b, c, and d below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocation costs to the Government.

33. *Rental cost of buildings and equipment.*

a. Rental costs of buildings or equipment are allowable to the extent that the decision to rent or lease is in accord with Section C–3. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed if the institution continued to own the property.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount that would be allowed if the institution owned the property. For this purpose, a "less-than-arms-length" lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other.

d. Where significant rental costs are incurred under leases which create a material equity in the leased property, they are allowable only up to the amount that would be allowed if the institution purchased the property on the date the lease agreement was executed. For this purpose, a material equity in the property exists when the lease:

(1) is noncancelable or is cancelable only upon the occurrence of some remote contingency, and

(2) has one or more of the following characteristics:

(a) Title to the property passes to the institution at some time during or after the lease period.

(b) The term of the lease corresponds substantially to the estimated useful life of the property (i.e., the period of economic usefulness to the legal owner of the property).

(c) The initial term is less than the useful life of the property and the institution has the option to renew the lease for the remaining useful life at substantially less than fair rental value.

(d) The property was acquired by the lessor to meet the special needs of the institution and will probably be usable only for that purpose and only by the institution.

(e) The institution has the right, during or at the expiration of the lease, to purchase the property at a price which at the inception of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option), except for any discount normally given to educational institutions.

34. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto, necessary for the proper performance of the sponsored agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

35. *Sabbatical leave costs.* Costs of leave of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the institution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

36. *Scholarships and student aid costs.*

a. Costs of scholarships, fellowships, and other programs of student aid are allowable only when the purpose of the sponsored agreement is to provide training to selected participants and the charge is approved by the sponsoring agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that (1) there is a bonafide employer-employee relationship between the student and the institution for the work performed, (2) the tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work, and (3) it is the institution's practice to similarly

compensate students in nonsponsored as well as sponsored activities.

b. Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages shall be subject to the reporting requirements stipulated in Section J8, and shall be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis.

37. *Severance pay.*

a. Severance pay is compensation in addition to regular salary and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal recurring turnover and which otherwise meet the conditions of a above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

38. *Specialized service facilities.*

a. The costs of institutional services involving the use of highly complex or specialized facilities such as electronic computers, wind tunnels, and reactors are allowable, provided the charge for the service meets the conditions of b through d below.

b. The cost of each service normally shall consist of both its direct costs and its allocable share of indirect costs with deductions for appropriate income or Federal financing as describing in Section C5.

c. The cost of such institutional services when material in amount will be charged directly to users, including sponsored agreements based on actual use of the services and a schedule of rates that does not discriminate between federally and nonfederally supported activities of the institution, including use by the institution for internal purposes. Charges for the use of specialized facilities should be designed to recover not more than the aggregate cost of the services over a long-term period agreed to by the institution and the cognizant Federal agency. Accordingly, it is not necessary that the rates charged for services be equal to the cost of providing those services during any one fiscal year as long as rates are reviewed periodically for consistency with the longterm plan and adjusted if necessary.

d. Where the costs incurred for such institutional services are not material, they may be allocated as indirect costs. Such arrangements must be agreed to by the institution and the cognizant Federal agency.

e. Where it is in the best interest of the Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

39. *Special services costs.* Costs incurred for general public relations activities, alumni activities, and similar services, are unallowable.

40. *Student activity costs.* Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the sponsored agreements.

41. *Taxes.*

a. In general taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable. Payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government, and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and (2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as sponsored agreement costs, will be credited or paid to the Government in the manner directed by the Government. However, any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such casts can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the sponsored agreement, should be treated as a direct cost.

43. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to c, d, e, and f below, when they are directly attributable to specific work under a sponsored agreement or are incurred in the normal course of administration of the institution or a department or program thereof.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personal movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

e. Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreign trip must be specifically approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located outside Canada and the United States and its territories and possessions, foreign travel means travel outside that country.

f. Domestic travel costs are allowable when permitted by the sponsored agreement. Expenditures for such travel will not be allowed if they exceed the amount specified by more than 25% or $500, whichever is greater, except with an advanced approval of the sponsoring agency.

44. *Termination costs applicable to sponsored agreements.*

a. Termination of sponsored agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items perculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this Appendix in the case of termination.

b. The cost of common items of material reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

c. If in a particular case, despite all reasonable efforts by the institution, certain

costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Appendix, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (3) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other Government agreements for which the special tooling, special machinery, or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution is reimbursed for disposals at a predetermined amount in accordance with the provisions of 34 CFR (Subpart O—Property) §§ 74.130–74.145.

g. Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

K. *Certification of Charges*

To assure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474; OMB Circulars A-102, A-110, and A-21)

k. Appendix D to Part 74 is added, to read as follows:

Appendix D to Part 74—Cost Principles for Hospitals

I. Purpose and Scope

A. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by hospitals under grants and contracts with the Department of Education. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances of dictate the extent of hospital participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. These principles will be applicable to both proprietary and nonprofit hospitals. No provision for profit or other increment above cost is provided for in these principles. However, this is not to be interpreted as precluding a negotiated fee between contracting parties when a fee is appropriate.

B. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of hospitals and of the Department of Education as to their scope, applicability and interpretation. It is recognized that:

1. The arrangements for hospital participation in the financing of a research and development project are properly subject to negotiation between the agency and the hospital concerned in accordance with such Government-wide criteria as may be applicable.

2. Each hospital, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own institutional philosophies and objectives.

3. Each hospital in the fulfillment of its contractual obligations should be expected to employ sound management practices.

4. The application of the principles established herein shall be in conformance with the generally accepted accounting practices of hospitals.

5. Hospitals receive reimbursements from the Federal Government for differing types of services under various programs such as support of Research and Development (including discrete clinical centers), Health Services Projects, Medicare, etc. It is essential that consistent procedures for determining reimbursable costs for similar services be employed without regard to program differences. Therefore, both the direct and indirect costs of research programs must be indentified as a cost center(s) for the cost finding and step-down requirements of the Medicare program, or in its absence the Medicaid program.

C. *Application.* All operating agencies within the Department of Education that sponsor research and development work in hospitals will apply these principles and related policy guides in determining the costs incurred for such work under grants and cost-reimbursement type contracts and subcontracts. These principles will also be used as a guide in the pricing of fixed-price contracts and subcontracts.

II. Definition of Terms

A. "Organized research" means all research activities of a hospital that may be identified whether the support for such research is from federal, non-federal or internal source.

B. "Departmental research" means research activities that are not separately budgeted and accounted for. Such work, which includes all research activities not encompassed under the term organized research, is regarded for purposes of this document as a part of the patient care activities of the hospital.

C. "Research agreement" means any valid arrangement to perform federally-sponsored research or development including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts.

D. "Instruction and training" means the formal or informal programs of educating and training technical and professional health services personnel, primarily medical and nursing training. This activity, if separately budgeted or identifiable with specific costs, should be considered as a cost objective for purposes of indirect cost allocations and the development of patient care costs.

E. "Other hospital activities" means all organized activities of a hospital not immediately related to the patient care, research, and instructional and training functions which produce identifiable revenue from the performance of these activities. If a non-related activity does not produce identifiable revenue, it may be necessary to allocate this expense using an appropriate basis. In such a case, the activity may be included as an allocable cost (See para. III D below). Also included under this definition is any category of cost treated as "Unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect cost (as defined in para. V. A.) are properly allocable.

F. "Patient care" means those departments or cost centers which render routine or ancillary services to in-patients and/or out-patients. As used in para. IX B.23, it means the cost of these services applicable to patients involved in research programs.

G. "Allocation" means the process by which the indirect costs are assigned as between:

1. Organized research,

2. Patient care including departmental research,

3. Instruction and training, and

4. Other hospital activities.

H. "Cost center" means an identifiable department or area (including research) within the hospital which has been assigned an account number in the hospital accounting system for the purpose of accumulating expense by department or area.

I. "Cost finding" is the process of recasting the data derived from the accounts ordinarily kept by a hospital to ascertain costs of the various types of services rendered. It is the determination of direct costs by specific identification and the proration of indirect costs by allocation.

J. "Step down" is a cost finding method that recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered closed and no further costs are apportioned to that center.

K. "Scatter bed" is a bed assigned to a research patient based on availability. Research patients occupying these beds are not physically segregated from nonresearch patients occupying beds. Scatter beds are geographically dispersed among all the beds available for use in the hospital. There are no special features attendant to a scatter bed that distinguishes it from others that could just as well have been occupied.

L. "Discrete bed" is a bed or beds that have been set aside for occupancy by research patients and are physically segregated from other hospital beds in an environment that permits an easily ascertainable allocation of costs associated with the space they occupy and the services they generate.

III. Basic Considerations

A. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the hospital less applicable credits. (See para. III–E.)

B. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are:

1. They must be reasonable.

2. They must be assigned to research agreements under the standards and methods provided herein.

3. They must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances (See para. I–E.5.) and

4. They must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

C. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

1. Whether or not the cost is of a type generally recognized as necessary for the operation of the hospital or the performance of the research agreement,

2. The restraints or requirements imposed by such factors as arm's length bargaining, federal and state laws and regulations, and research agreement terms and conditions,

3. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the hospital, its patients, its employees, its students, the Government, and the public at large, and

4. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established hospital policies and practices applicable to the work of the hospital generally, including Government research.

D. *Allocable costs.* 1. A cost is allocable to a particular cost center (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost center in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the hospital in proportions that can be approximated through use of reasonable methods, or it is necessary to the overall operation of the hospital and, in light of the standards provided in this chapter, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items are specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

2. Any costs allocable to a particular research agreement under the standards provided in these principles may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

E. *Applicable credits.* 1. The term applicable credits refers to those receipts or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs as outlined in para. V–A. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; tuition; adjustments of overpayments or erroneous charges; and services rendered to patients admitted to federally funded clinical research centers, primarily for care though also participating in research protocols.

2. In some instances, the amounts received from the Federal Government to finance hospital activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the hospital in determining the rates or amounts to be charged to government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. Thus, where such items are provided for or benefit a particular hospital activity, i.e., patient care, research, instruction and training, or other, they should be treated as an offset to the indirect costs apportioned to that activity. Where the benefits are common to all hospital activities they should be treated as a credit to the total indirect cost pool before allocation to the various cost objectives.

IV. Direct Costs

A. *General.* Direct costs are those that can be identified specifically with a particular cost center. For this purpose, the term cost center refers not only to the ultimate centers against which costs are finally lodged such as research agreements, but also to other established cost centers such as the individual accounts for recording particular objects or items of expense, and the separate account groupings designed to record the expenses incurred by individual organizational units, functions, projects and the like. In general, the administrative functions and service activities described in para. VI are identifiable as separate cost centers, and the expenses associated with such centers become eligible in due course for distribution as indirect costs of research agreements and other ultimate cost centers.

B. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical of transactions chargeable to a research agreement as direct costs are the compensation of employees for the time or effort devoted to the performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently accorded to all employees and treated by the hospital as direct rather than indirect costs (see para. V. B4b); the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, such as extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only the actual direct and indirect costs of such material or service and conforming to generally accepted cost accounting practices consistently followed by the institution.

V. Indirect Costs

A. *General.* Indirect costs are those that have been incurred for common or joint objectives, and thus are not readily subject to treatment as direct costs of research agreements or other ultimate or revenue producing cost centers. In hospitals such costs normally are classified but not necessarily restricted to the following functional categories: Depreciation; Administrative and General (including fringe

benefits if not charged directly); Operation of Plant; Maintenance of Plant; Laundry and Linen Service; Housekeeping; Dietary; Maintenance of Personnel; and Medical Records and Library.

B. *Criteria for distribution.*—1. *Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the hospital, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

2. *Need for cost groupings.* The overall objective of the allocation process is to distribute the indirect costs described in para. VI to organized research, patient care, instruction and training, and other hospital activities in reasonable proportions consistent with the nature and extent of the use of the hospital's resources by research personnel, medical staff, patients, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in para. V-A. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost centers to which distribution is appropriate. Each such pool or cost grouping should then be distributed individually to the related cost centers, using the distribution base or method most appropriate in the light of the guides set out in B3 below. While this paragraph places primary emphasis on a step-down method of indirect cost computation, para. VIII provides an alternate method which may be used under certain conditions.

3. *Selection of distribution method.* Actual conditions must be taken into account in selecting the method or base to be used in distributing to related cost centers the expenses assembled under each of the individual cost groups established as indicated under B2 above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Care should be given, however, to eliminate similar or duplicative costs from any other distribution made to this area. Where the expenses under a cost grouping are more general in nature, the distribution to related cost centers should be made through use of a selected base which will produce results which are equitable to both the Government and the hospital. In general, any cost element or cost-related factor associated with the hospital's work is potentially adaptable for use as a distribution base provided:

a. It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and

b. It is common to the related cost centers during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to related cost centers in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

4. *General consideration on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at a hospital is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

a. Where certain items or categories of expense relate solely to one of the major divisions of the hospital (patient care, sponsored research, instruction and training, or other hospital activities) or to any two but not all, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in B2 and B3 above.

b. Where any types of expense ordinary treated as indirect cost as outlined in para. V-A are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must through separate cost grouping be excluded from the indirect costs allocable to research agreements.

c. Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other hospital activities.

d. Where organized activities (including identifiable segments of organized research as well as the activities cited in para. II-E) provide their own purchasing, personnel administration, building maintenance, or housekeeping or similar service, the distribution of such elements of indirect cost to such activities should be accomplished through cost grouping which includes only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

e. Where the hospital elects to treat as indirect charges the costs of pension plans and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to related cost centers, including organized research.

f. Where the hospital is affiliated with a medical school or some other institution which performs organized research on the hospital's premises, every effort should be made to establish separate cost groupings in the Administrative and General or other applicable category which will reasonably reflect the use of services and facilities by such research. (See also para. VII-A.3)

5. *Materiality.* Where it is determined that the use of separate cost groupings and selective distribution are necessary to produce equitable results, the number of such separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

C. *Administration of limitations on allowances for indirect costs.* 1. Research grants may be subject to laws and/or administrative regulations that limit the allowance for indirect costs under each such grant to a stated percentage of the direct costs allowed. Agencies that sponsor such grants will establish procedures which will assure that:

a. the terms and amount authorized in each case conform with the provisions of paragraphs III, V and IX of these principles as they apply to matters involving the consistent treatment and allowability of individual items of cost; and

b. the amount actually allowed for indirect costs under each such research grant does not exceed the maximum allowable under the limitation or the amount otherwise allowable under these principles, whichever is the smaller.

2. Where the actual allowance for indirect costs on any research grant must be restricted to the smaller of the two alternative amounts referred to in C1 above, such alternative amounts should be determined in accordance with the following guides:

a. The maximum allowable under the limitation should be established by applying the stated percentage to a direct cost base which shall include all items of expenditure authorized by the sponsoring agency for inclusion as part of the total cost for the direct benefit of the work under the grant; and

b. The amount otherwise allowable under these principles should be established by applying the current institutional indirect cost rate to those elements of direct cost which were included in the base on which the rate was computed.

3. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under the research agreement involved may not be shifted to other research agreements.

VI. Identification and Assignment of Indirect Costs

A. *Depreciation or use charge.* 1. The expenses under this heading should include depreciation (as defined in para. IX-B.9a) on buildings, fixed equipment, and movable equipment, except to the extent purchased through federal funds. Where adequate records for the recording of depreciation are not available, a use charge may be substituted for depreciation. (See para. IX-B.)

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides set forth in para. V-B, on a basis that gives primary emphasis to (a) space utilization with respect to depreciation on buildings and fixed

equipment; and (b) specific identification of assets and their use with respect to movable equipment as it relates to patient care, organized research, instruction and training, and other hospital activities. Where such records are not sufficient for the purpose of the foregoing, reasonable estimates will suffice as a means for effecting distribution of the amounts involved.

B. *Administration and general expenses.* 1. The expenses under this heading are those that have been incurred for the administrative offices of the hospital including accounting, personnel, purchasing, information centers, telephone expense, and the like which do not relate solely to any major division of the institution, i.e., solely to patient care, organized research, instruction and training, or other hospital activities.

2. The expenses included in this category may be allocated on the basis of total expenditures exclusive of capital expenditures, or salaries and wages in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the hospital; otherwise the distribution of Administration and General expenses should be made through use of selected bases, applied to separate cost groupings established within this category of expenses in accordance with the guides set out in para. V–B.

C. *Operation of plant.* 1. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, and provision of utilities (exclusive of telephone expense) and protective services to the physical plant. They include expenses incurred for such items as power plant operations, general utility costs, elevator operations, protection services, and general parking lots.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to space utilization. The allocations should be developed as follows:

a. Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various costs centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume or space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

D. *Maintenance of plant.* 1. The expenses under this heading should include:

a. All salaries and wages pertaining to ordinary repair and maintenance work performed by employees on the payroll of the hospital;

b. All supplies and parts used in the ordinary repairing and maintaining of buildings and general equipment; and

c. Amounts paid to outside concerns for the ordinary repairing and maintaining of buildings and general equipment.

2. The expenses included in this category should be allocated to applicable costs centers in a manner consistent with the guides provided in para. V–B on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows:

a. Where actual space and related cost records are available and can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other basis may be used provided consideration is given to the use of facilities by research personnel, and others, including patients.

E. *Laundry and linen.* 1. The expenses under this heading should include:

a. Salaries and wages of laundry department employees, seamstresses, clean linen handlers, linen delivery men, etc.;

b. Supplies used in connection with the laundry operation and all linens purchased; and

c. Amounts paid to outside concerns for purchased laundry and/or or linen service.

2. The expense included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to actual pounds of linen used. The allocations should be developed as follows:

a. Where actual poundage and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where it can be demonstrated that a poundage basis of allocation is impractical or inequitable other bases may be used provided consideration is given to the use of linen by research personnel and others, including patients.

F. *Housekeeping.* 1. The expenses under this heading should include:

a. All salaries and wages of the department head, foreman, maids, porters, janitors, wall washers, and other housekeeping employees;

b. All supplies used in carrying out the housekeeping functions; and

c. Amounts paid to outside concerns for purchased services such as window washing, insect extermination, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner-consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to space actually serviced by the housekeeping department. The allocations and apportionments should be developed as follows:

a. Where actual space serviced and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space serviced and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts of housekeeping expenses involved; or

c. Where it can be demonstrated that the space serviced basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of housekeeping services by research personnel and others, including patients.

G. *Dietary.* 1. These expenses, as used herein, shall mean only the subsidy provided by the hospital to its employees including research personnel through its cafeteria operation. The hospital must be able to demonstrate through the use of proper cost accounting techniques that the cafeteria operates at a loss to the benefit of employees.

2. The reasonable operating basis of a subsidized cafetaria operation should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to number of employees.

H. *Maintenance (housing) of personnel.* 1. The expenses under this heading should include:

a. The salaries and wages of matrons, clerks, and other employees engaged in work in nurses' residences and other employees' quarters;

b. All supplies used in connection with the operation of such dormitories; and

c. Payments to outside agencies for the rental of houses, apartments, or rooms used by hospital personnel.

2. The expenses included in this catetory should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to employees utilization of housing facilities. The allocation should be developed as follows:

a. Appropriate credit should be given for all payments received from employees or otherwise to reduce the expense to be allocated;

b. A net cost per housed employee may then be computed; and

c. Allocation should be made on a department basis based on the number of housed employees in each respective department.

I. *Medical records and library.* 1. The expenses under this heading should include:

a. The salaries and wages of the records librarian, medical librarian, clerks, stenographers, etc.; and

b. All supplies such as medical record forms, chart covers, filing supplies, stationery, medical library books, periodicals, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to a special time survey of medical records personnel. If this appears to be impractical or inequitable, other bases may be used provided consideration is given to the use of these facilities by research personnel and others, including patients.

VII. Determination and Application of Indirect Cost Rate or Rates

A. *Indirect cost pools.* 1. Subject to (2) below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should be distributed to individual research agreements benefiting therefrom on a single rate basis.

2. In some instances a single rate basis for use on all government research at a hospital may not be appropriate since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of government research at the institution. For this purpose, a particular segment of government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. An example of this differential may be in the development of a separate indirect cost pool for a clinical research center grant. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting thereform should be utilized provided it is determined that:

a. Such indirect cost rate differs significantly from that which would have obtained under (1) above; and

b. The volume of research work to which such rate would apply is material in relation to other government research at the institution.

3. It is a common practice for grants or contracts awarded to other institutions, typically University Schools of Medicine, to be performed on hospital premises. In these cases the hospital should develop a separate indirect cost pool applicable to the work under such grants or contracts. This pool should be developed by a selective distribution of only those indirect cost categories which benefit the work performed by the other institution, within the practical limits dictated by available data and the materiality of the amounts involved. Hospital costs determined to be allocable to grants or contracts awarded to another institution may not be recovered as a cost of grants or contracts awarded directly to the hospital.

B. *The distribution base.* Preferably, indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. However, where the use of salaries and wages results in an inequitable allocation of costs to the research agreements, total direct costs or a variation thereof, may be used in lieu of salaries and wages. Regardless of the base used, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to para. VII–A. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages (or other base selected) for all research agreements identified with such a pool.

C. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained or off-campus research activities where the benefits derived from a hospital's indirect services cannot be readily determine. Such amount negotiated in lieu of indirect costs will be treated as an offset to the appropriate indirect cost pool after allocation to patient care, organized research, instruction and training, and other hospital activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

D. *Predetermined overhead rates.* The utilization of predetermined fixed overhead rates may offer potential advantages in the administration of research agreements by facilitating the preparation of research budgets and permitting more expeditious close out of the agreements when the work is completed. Therefore, to the extent allowed by law, consideration may be given to the negotiation of predetermined fixed rates in those situations where the cost experience and other pertinent factors available are deemed sufficient to enable the Government and the hospital to reach a reasonable consclusion as to the probable level of the indirect cost rate for the ensuing accounting period.

VIII. Simplified Method for Small Institutions

A. *General.* 1. Where the total direct cost of all government-sponsored research and development work at a hospital in a year is minimal, the use of the abbreviated procedure described in para. VIII–B below may be acceptable in the determination of allowable indirect costs. This method may also be used to initially determine a provisional indirect cost rate for hospitals that have not previously established a rate. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for determining the indirect cost rate applicable to research agreements at the institution.

2. The rigid formula approach provided under the abbreviated procedure has limitations which may preclude its use at some hospitals either because the minimum data required for this purpose are not readily available or because the application of the abbreviated procedure to the available data produces results which appear inequitable to the Government or the hospital. In any such case, indirect costs should be determined through use of the regular procedure rather than the abbreviated procedure.

3. In certain instances where the total direct cost of all government-sponsored research and development work at the hospital is more than minimal, the abbreviated procedure may be used if prior permission is obtained. This alternative will be granted only in those cases where it can be demonstrated that the step-down technique cannot be followed.

B. *Abbreviated procedure.* 1. Total expenditures as taken from the most recent annual financial report will be adjusted by eliminating from further consideration expenditures for capital items as defined in para. IX–B.4 and unallowable costs as defined under various headings in para. IX and para. III–E.

2. Total expenditures as adjusted under the foregoing will then be distributed among (a) expenditures applicable to administrative and general overhead functions, (b) expenditures applicable to all other overhead functions, and (c) expenditures for all other purposes. The first group shall include amounts associated with the functional categories, Administration and General, and Dietary, as defined in para. VI. The second group shall include Depreciation, Operation of Plant, Maintenance of Plant, and Housekeeping. The third group—expenditures for all other purposes—shall include the amounts applicable to all other activities, namely, patient care, organized research, instruction and trianing, and other hospital activities as defined under para. II–E. For the purposes of this section, the functional categories of Laundry and Linen, Maintenance of Personnel, and Medical Records and Library as defined in para. VI shall be considered as expenditures for all other purposes.

3. The expenditures distributed to the first two groups in para. VIII–B.2 should then be adjusted by those receipts or negative expenditure types of transactions which tend to reduce expense items allocable to research agreements as indirect costs. Examples of such receipts or negative expenditures are itemized in para. III–E.1.

4. In applying the procedures in para. VIII–B.1 and B.2, the cost of unallowable activities such as Gift Shop, Investment Property Management, Fund Raising, and Public Relations, when they benefit from the hospital's indirect cost services, should be treated as expenditures for all other purposes. Such activities are presumed to benefit from the hospital's indirect cost services when they include salaries of personnel working in the hospital. When they do not include such salaries, they should be eliminated from the indirect cost rate computation.

5. The indirect cost rate will then be computed in two stages. The first stage requires the computation of an Administrative and General rate component. This is done by applying a ratio of research direct costs over total direct costs to the

Administrative and General pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base. The second stage requires the computation of an All other Indirect Cost rate component. This is done by applying a ratio of research direct space over total direct space to All Other Indirect Cost pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base.

The total of the two rate components will be the institution's indirect cost rate. For the purposes of this section, the research direct cost or space and total direct cost or space will be that cost or space identified with the functional categories classified under Expenditures for all other purposes under para. VIII–B.2.

IX. General Standards for Selected Items of Cost

A. *General.* This section provides standards to be applied in establishing the allowability of certain items involved in determing cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern. However, in some cases advance understandings should be reached on particular cost items in order that the full costs of research be supported. The extent of allowability of the selected items of cost covered in this section has been stated to apply broadly to many accounting systems in varying environmental situations. Thus, as to any given research agreement, the reasonableness and allocability of certain items of cost may be difficult to determine, particulary in connection with hospitals which have medical school or other affiliations. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective recipients of federal funds particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by the Government. Any such agreement should be incorporated in the research agreement itself. However, the absence of such an advance agreement on any element of cost will not in itself serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

1. Facilities costs, such as:
a. Depreciation
b. Rental
c. Use charges for fully depreciated assets
d. Idle facilities and idle capacity
e. Plant reconversion
f. Extraordinary or deferred maintenance and repair
g. Acquisition of automatic data processing equipment
2. Preaward costs
3. Non-hospital professional activities
4. Self-insurance
5. Support services charged directly (computer services, printing and duplication services, etc.)
6. Employee compensation, travel, and other personnel costs, including:
a. Compensation for personal service, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation
b. Morale, health, welfare, and food service and dormitory costs
c. Training and educations costs
d. Relocation costs, including special or mass personnel movement

B. *Selected items.*—1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for:

a. The recruitment of persons required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs as set forth in para IX–B.34
b. The procurement of scarce items for the performance of the research agreement; or
c. The disposal of scrap or surplus materials acquired in the performance of the research agreement.

Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in paragraph IV and V are observed.

2. *Bad debts.* Losses arising from uncollectible accounts and other claims and related collection and legal costs are unallowable except that a bad debt may be included as a direct cost of the research agreement to the extent that it is caused by a research patient and approved by the awarding agency. This inclusion is only intended to cover the situation of the patient admitted for research purposes who subsequently or in conjunction with the research receives clinical care for which a charge is made to the patient. If, after exhausting all means of collecting these charges, a bad debt results, it may be considered an appropriate charge to the research agreement.

3. *Bonding costs.* a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the hospital. They arise also in instances where the hospital requires similar assurance. Included are such types as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the research agreement are allowable.

c. Costs of bonding required by the hospital in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

4. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment should be capitalized and are unallowable except as provided for in the research agreement.

5. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

6. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

7. *Compensation for personal service.*—a. *General.* Compensation for personal services covers all remuneration paid currently or accrued to employees of the hospital for services rendered during the period of performance under government research agreements. Such remuneration includes salaries, wages, staff benefits (see para. IX–B.10), and pension plan costs (see para. IX–B.25). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on government research agreements and for other work allocable as indirect costs to sponsored research are determined and supported as hereinafter provided. For non-profit, non-proprietary institutions, where federally supported programs constitute less than a preponderance of the activity at the institution the primary test of reasonableness will be to require that the institution's compensation policies be applied consistently both to federally-sponsored and non-sponsored activities alike. However, where special circumstances so dictate a contractural clause may be utilized which calls for application of the test of comparability in determining the reasonableness of compensation.

b. *Payroll distribution.* Amounts charged to organized research for personal services, regardless of whether treated as direct costs or allocated as indirect costs, will be based on hosptial payrolls which have been approved and documented in accordance with generally accepted hospital practices. In order to develop necessary direct and indirect allocations of cost, supplementary data on time or effort as provided in (c) below, normally need be required only for individuals whose compensation is properly chargeable to two or more research agreements or to two or more of the following broad functional categories: (1) patient care; (2) organized research; (3) instruction and training; (4) indirect activities as defined in para. V–A; or (5) other hospital activities as defined in para. II–E.

c. *Reporting time or effort.* Charges for salaries and wages of individuals other than members of the professional staff will be supported by daily time and attendance and payroll distribution records. For members of the professional staff, current and reasonable estimates of the percentage distribution of their total effort may be used as support in the absence of actual time records. The term professional staff for purposes of this section includes physicians, research associates, and other personnel performing work at responsible levels of activities. These personnel normally fulfill duties, the competent performance of which usually requires persons possessing degrees from accredited institutions of higher learning and/or state licensure. In order to qualify as current and reasonable, estimates must be made no later than one month (though not necessarily a calendar month) after the month in which the services were performed.

d. *Preparation of estimates of effort.* Where required under (c) above, estimates of effort spent by a member of the professional staff on each research agreement should be prepared by the individual who performed the services or by a responsible individual such as a department head or supervisor having first-hand knowledge of the services performed on each research agreement. Estimates must show the allocation of effort between organized research and all other hospital activities in terms of the percentage of total effort devoted to each of the broad functional categories referred to in (b) above. The estimate of effort spent on a research agreement may include a reasonable amount of time spent in activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues with respect to related research, and attending appropriate scientific meetings and conferences. The term "all other hospital activities" would include departmental research, administration, committee work, and public services undertaken on behalf of the hospital.

e. *Application of budget estimates.* Estimates determined before the performance of services, such as budget estimates on a monthly, quarterly, or yearly basis do not qualify as estimates of effort spent.

f. *Non-hospital professional activities.* A hospital must not alter or waive hospital-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra hospital compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where hospital-wide policies do not adequately define the permissible extent of consultantships or other non-hospital activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as betweeen (1) hospital activities, and (2) non-hospital professional activities. If the sponsoring agency should consider the extent of non-hospital professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis.

g. *Salary rates for part-time appointments.* Charges for work performed on government research by staff members having only part-time appointments will be determined at a rate not in excess of that for which he is regularly paid for his part-time staff assignment.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Depreciation and use allowances.* a. Hospitals may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical mannner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular hospital's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

b. Due consideration will be given to government-furnished research facilities utilized by the institution when computing use allowances and/or depreciation if the government-furnished research facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of accounts, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved.

c. Normal depreciation on a hospital's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of research cost provided that the amount thereof is computed:

1. Upon the property cost basis used by the hospital for Federal Income Tax purposes (See section 167 of the Internal Revenue Code of 1954); or

2. In the case of non-profit or tax exempt organizations, upon a property cost basis which could have been used by the hospital for Federal Income Tax purposes, had such hospital been subject to the payment of income tax; and in either case

3. By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

i. The straight line method;

ii. The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

iii. The sum of the years-digits method; and

iv. Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowance which would have been used had such allowance been computed under the method described in (ii) above.

d. Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

f. Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or

decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

g. Hospitals which choose a depreciation allowance for assets purchased prior to 1966 based on a percentage of operating costs in lieu of normal depreciation for purposes of reimbursement under Public Law 89–97 (Medicare) shall utilize that method for determining depreciation applicable to organized research.

The operating costs to be used are the lower of the hospital's 1965 operating costs or the hospital's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966–67, with such percentage being uniformity reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965. However, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the hospital's allowable cost for the current year. After total depreciation has been computed, allocation methods are used to determine the share attributable to organized research.

For purposes of this section, "Operating Costs" means the total costs incurred by the hospital in operating the institution, and includes patient care, research, and other activities. "Allowable Costs" means operating costs less unallowable costs as defined in these principles; by the application of allocation methods to the total amount of such allowable costs, the share attributable to Federal-sponsored research is determined.

A hospital which elects to use this procedure under Public Law 89–97 and subsequently changes to an actual depreciation basis on pre-1966 assets in accordance with the option afforded under the Medicare program shall simultaneously change to an actual depreciation basis for organized research.

Where the hospital desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the Department of Education.

h. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding ten percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent of such estimate.

i. Depreciation and/or use charges should usually be allocated to research and other activities as an indirect cost.

10. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid benefits, recreational activities, employees' counseling services, and other expenses incurred in accordance with the hospital's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the hospital. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

11. *Entertainment costs.* Except as pertains to 10 above, costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

12. *Equipment and other facilities.* The cost of equipment or other facilities are allowable on a direct charge basis where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

13. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with federal, state and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the awarding agency.

14. *Insurance and indemnification.* a. Costs of insurance required or approved and maintained pursuant to the research agreement are allowable.

b. Costs of other insurance maintained by the hospital in connection with the general conduct of its activities are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to government owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks. Such contributions are subject to prior approval of the Government.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations are allowable.

15. *Interest, fund raising and investment management costs.* a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are not allowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

16. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the hospital and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

17. *Losses on research agreements or contracts.* Any excess of costs over income under any agreement or contract of any nature is unallowable. This includes, but is not limited to, the hopsital's contributed portion by reason of cost-sharing agreements, under-recoveries through negotiation of flat amounts for overhead, or legal or administrative limitations.

18. *Maintenance and repair costs.* a. Costs necessary for the upkeep of property (including government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows:

1. Normal maintenance and repair costs are allowable;

2. Extraordinary maintenance and repair costs are allowable, provided they are allocated to the periods to which applicable for purposes of determining research costs.

b. Expenditures for plant and equipment, including rehabilitation thereof, which according to generally accepted accounting principles as applied under the hospital's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

19. *Material costs.* Costs incurred for purchased materials, supplies and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances

received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the hospital. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where government donated or furnished material is used in performing the research agreement, such material will be used without charge.

20. *Memberships, subscriptions and professional activity costs.* a. Costs of the hospital's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the hospital's subscriptions to civic, business, professional and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

21. *Organization costs.* Expenditures such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers in connection with (a) organization or reorganization of a hospital, or (b) raising capital, are unallowable.

22. *Other business expenses.* Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the hospital, cost of shareholders meetings preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

23. *Patient care.* The cost of routine and ancillary or special services to research patients is an allowable direct cost of research agreements.

a. Routine services shall include the costs of the regular room, dietary and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made.

b. Ancillary or special services are the services for which charges are customarily made in addition to routine services, such as operating rooms, anesthesia, laboratory, BMR–EKG, etc.

c. Patient care, whether expressed as a rate or an amount, shall be computed in a manner consistent with the procedures used by the Health Care Financing Administration, Department of Health and Human Services, to determine reimbursable costs under Public Law 89–97 (Medicare Program). The allowability of specific categories of cost shall be in accordance with those principles rather than the principles for research contained herein. In the absence of participation in the Medicare program by a hospital, all references to the Medicare program in these principles shall be construed as meaning the Medicaid program.

i. Once costs have been recognized as allowable, the indirect costs or general service center's cost shall be allocated (stepped-down) to special service centers, and all patient and nonpatient costs centers based upon actual services received or benefiting these centers.

ii. After allocation, routine and ancillary costs shall be apportioned to scatter-bed research patients on the same basis as is used to apportion costs to Medicare patients, i.e. using either the departmental method or the combination method, as those methods are defined by the Health Care Financing Administration; except that final settlement shall be on a grant-by-grant basis. However, to the extent that the Health Care Financing Administration; has recognized any other method of cost apportionment, that method generally shall also be recognized as applicable to the determination of research patient care costs.

iii. A cost center must be established on Medicare reimbursement forms for each discrete-bed unit grant award received by a hospital. Routine costs should be stepped-down to this line item(s) in the normal course of stepping-down costs under Medicare/Medicaid requirements. However, in stepping-down routine costs, consideration must be given to preventing a step-down of those costs to discrete-bed unit line items that have already been paid for directly by the grant, such as bedside nursing costs. Ancillary costs allocable to research discrete-bed units shall be determined and proposed in accordance with Section 23.c.ii.

d. Where federally sponsored research programs provide specifically for the direct reimbursement of nursing, dietary, and other services, appropriate adjustment must be made to patient care costs to preclude duplication and/or misallocation of costs.

24. *Patent costs.* Costs of preparing disclosures, reports and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also para. IX–B.36.)

25. *Pension plan costs.* Costs of the hospital's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which insure to the benefit of the hospital.

26. *Plan security costs.* Necessary expenses incurred to comply with government security requirements including wages, uniforms and equipment of personnel engaged in plant protection are allowable.

27. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

28. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the hospital are allowable subject to (b) and (c) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a partricular case include (1) the past pattern of such costs, particularly in the years prior to the award of government research agreements on the institution's total activity; (2) the nature and scope of managerial services expected of the institution's own organizations; and (3) whether the proportion of government work to the hospital's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under government reseach agreements.

c. Costs of legal, accounting and consulting services, and related costs incurred in connection with organization and reorganization or the prosecution of claims against the Government are unallowable. Costs of legal, accounting and consulting services, and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the research agreement.

29. *Profits and losses on disposition of plant equipment, or other assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sales or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

30. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential government and non-government research agreements or projects, including the development of technical data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the methods used, the results obtained may be accepted only if found to be reasonable and equitable.

31. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are

unallowable unless specifically authorized by the sponsoring agency.

32. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for a project are allowable only as a direct charge when such work has been approved in advance by the sponsoring agency concerned.

33. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of government research agreement work, fair wear and tear excepted, are allowable.

34. *Recruiting costs.* a. Subject to (b), (c), and (d) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where an institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect) are unallowable.

c. Costs of help wanted advertising, special emoluments; fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocations costs as were charged to the Government.

35. *Rental costs (including sale and lease-back of facilities).* a. Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations comparison of rental costs with the amount which the hospital would have received had it owned the facilities.

b. Charges in the nature of rent between organizations having a legal or other affiliation or arrangement such as hospitals, medical schools, foundations, etc., are allowable to the extent such charges do not exceed the normal costs of ownership such as depreciation, taxes, insurance, and maintenance, provided that no part of such costs shall duplicate any other allowed costs.

c. Unless otherwise specifically provided in the agreement, rental costs specified in sale and lease-back agreements incurred by hospitals through selling plant facilities to investment organizations such as insurance companies or to private investors, and concurrently leasing back the same facilities are allowable only to the extent that such rentals do not exceed the amount which the hospital would have received had it retained legal title to the facilities.

36. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid, or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

37. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by a hospital to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover, and which otherwise meet the conditions of (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate to the extent of its fair share in any specific payment.

38. *Specialized service facilities operated by a hospital.* a. The costs of institutional services involving the use of highly complex and specialized facilities such as electronic computers and reactors are allowable provided the charges therefor meet the conditions of (b) or (c) below, and otherwise take into account any items of income or federal financing that qualify as applicable credits under para. III-E.

b. The costs of such hospital services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities at rates that (1) are designed to recover only actual costs of providing such services, and (2) are applied on a nondiscriminatory basis as between organized research and other work of the hospital including commercial or accommodation sales and usage by the hospital for internal purposes. This would include use of such facilities as radiology, laboratories, maintenance men used for a special purpose, medical art, photography, etc.

c. In the absence of an acceptable arrangement for direct costing as provided in (b) above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with all government users of the facilities in order to assure equitable distribution of the indirect costs.

39. *Special administrative costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services are unallowable.

40. *Staff and/or employee benefits.* a. Staff and/or employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as for annual leave, sick leave, military leave and the like are allowable provided such costs are absorbed by all hospital activities including organized research in proportion to the relative amount of time or effort actually devoted to each.

b. Staff benefits in the form of employer contributions or expenses for Social Security taxes, employee insurance, Workmen's Compensation insurance, the Pension Plan (see para. IX–B.25), hospital costs or remission of hospital charges to the extent of costs for individual employees or their families, and the like are allowable provided such benefits are granted in accordance with established hospital policies, and provided such contributions and other expenses whether treated as indirect costs or an increment of direct labor costs are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

41. *Taxes.* a. In general, taxes which the hospital is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable except for (1) taxes from which exemptions are available to the hospital directly or which are available to the hospital based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, (2) special assessments on land which represent capital improvements, and (3) Federal Income Taxes.

b. Any refund of taxes, interest, or penalties, and any payment to the hospital of interest thereon attributable to taxes, interest or penalties, which were allowed as research agreement costs will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to a hospital

incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the hospital had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for inbound freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or delivered are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the material received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

43. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the hospital. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to (c) and (d) below when they are directly attributable to specific work under a research agreement or when they are incurred in the normal course of administration of the hospital or a department or research program thereof.

c. The difference in cost between first class air accommodations and less than first class air accommodations is unallowable except when less than first class air accommodations are not reasonably available to meet necessary mission requirements such as where less than first class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

44. *Termination costs applicable to contracts.* a. Contract terminations generally give rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of these principles in the case of contract termination.

b. The cost of common items of material reasonably usable on the hospital's other work will not be allowable unless the hospital submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the hospital's plans for current scheduled work or activities including other research agreements. Contemporaneous purchases of common items by the hospital will be regarded as evidence that such items are reasonably usable on the hospital's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirement of other work.

c. If in a particular case, despite all reasonable efforts by the hospital, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in these principles, except that any such costs continuing after termination due to the negligent or willful failure of the hospital to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the hospital; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and (3) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other government contracts for which the special tooling, special machinery or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and (2) the hospital makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract and the termination and settlement of subcontracts; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the contract.

g. Subcontract claims including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

45. *Voluntary services.* The value of voluntary services provided by sisters or other members of religious orders is allowable provided that amounts do not exceed that paid other employees for similar work. Such amounts must be identifiable in the records of the hospital as a legal obligation of the hospital. This may be reflected by an agreement between the religious order and the hospital supported by evidence of payments to the order.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circulars A–102 and A–110)

1. Appendix E to Part 74 is added, to read as follows:

Appendix E to Part 74—Audit Requirements for State and Local Governments

1. *Purpose.* This appendix is issued pursuant to the Single Audit Act of 1984. Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this appendix.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this appendix, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law, including 34 CFR Part 74.

3. *Definitions.* For the purposes of this appendix the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 9 of this appendix.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audits of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resources use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this appendix.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has government functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

4. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this appendix. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of 34 CFR Part 74.

d. The auditor shall determine whether.

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

5. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

6. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with 34 CFR Part 74, Appendix A, Cost Principles for State and Local Governments and 34 CFR 74.24.

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments,* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

7. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. determine whether State or local subrecipients have met the audit requirements of this appendix and whether subrecipients covered by 34 CFR Part 74 have met the requirements of that part.

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this appendix, 34 CFR Part 74, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this appendix.

8. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this appendix shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this appendix do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this appendix do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this appendix shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

9. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this appendix.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency, will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this appendix.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, or any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this appendix. In such instances, the recipient with be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this appendix, so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

10. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 11(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

11. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this appendix. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluaton.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 11f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The

clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

12. *Audit Resolution.* As provided in paragraph 9, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

13. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

14. *Audit Costs.* The cost of audits made in accordance with the provisions of this appendix are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of 34 CFR Part 74, Appendix A, Cost Principles for State and Local Governments.

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

15. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this appendix. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily.
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

16. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by 34 CFR 74.36. The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

17. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this appendix. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

Attachment to Appendix E—Definition of Major Program as Provided in Pub. L. 98–502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474; OMB Circulars A-102, A-110, and A-128)

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS [REMOVED]

3. Part 80 is removed.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1206 and 1207

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas at 202–523–3621 (FTS 523–3621).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) program provides grants, when funds are available, to State and local governments, historical societies, archives, libraries and associations for the preservation, arrangement and description of historical records and for a broad range of archival training and development programs.

The Catalog of Federal Domestic Assistance number is 89.001.

NARA proposes to amend Part 1206 to remove provisions in conflict with the common government-wide rule.

List of Subjects

36 CFR Part 1206

Grant programs—Archives and records, Grants administration

36 CFR Part 1207

Accounting, Administrative practice and procedure, Grant programs—Archives and records, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 36 of the Code of Federal Regulations be amended as set forth below.

Dated: October 6, 1988.

Don W. Wilson,

Archivist of the United States.

1. Part 1207 is revised to read as set forth at the end of this document:

PART 1207—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Authority: 44 U.S.C. 2104.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1207 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "NARA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 1207.3 is amended by adding a definition for "NARA" alphabetically to read as follows:

§ 1207.3 Definitions.

* * * * *

"NARA" means National Archives and Records Administration.

* * * * *

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

3. Part 1206 is amended as set forth below:

a. The authority citation for Part 1206 is revised to read as follows:

Authority: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506, Pub. L. 100–365.

b. Section 1206.54 is revised to read as follows:

§ 1206.54 Who may apply.

Applications from individuals, nonprofit organizations and institutions and from State and local government agencies will be considered. Proposals under the National Historical Records Program for State projects (but not regional or national projects) will be accepted only from applicants in States in which a State Historical Records Coordinator has been appointed and a State Historical Records Advisory Board nominated and approved. The records program pamphlet "Guidelines and Procedures: Applications and Grants," which is available from the Commission and from State Historical Records Coordinators, provides guidance on determining State Historical Records Coordinators, provides guidance on determining whether a proposed project is considered a State project.

c. Section 1206.72 is revised to read as follows:

§ 1206.72 Grant period and payments.

The grant period begins on the date specified in the grant letter and runs the length of time specified therein. Obligations incurred before the effective date of the grant shall not be charged against the grant.

§§ 1206.60, 1206.86 and 1206.92 [Removed and Reserved]

d. Sections 1206.60, 1206.86, and 1206.92 are removed and reserved.

e. Section 1206.94 is revised to read as follows:

§ 1206.94 Compliance with Government-wide requirements.

In addition to the grant application and grant administration requirements outlined in this Part 1206, grantees are responsible for complying with applicable Government-wide requirements contained in Part 1207 of this Chapter.

VETERANS ADMINISTRATION

38 CFR Part 43

FOR FURTHER INFORMATION CONTACT: Mr. C.G. Verenes, Acting Chief, Directives Management Division (731), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–4244.

List of Subjects in 38 CFR Part 43

Accounting, Administration practice and procedure, Grant programs-State cemeteries and State home facilities, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Part 43 of Title 38 of the Code of Federal Regulations be amended as set forth below.

Approved: October 4, 1988.

By direction of the Administrator.

James E. DeWire,

Chief of Staff.

1. Part 43 is revised to read as set forth at the end of this document:

PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Authority: 38 U.S.C. 210, 38 U.S.C. 612, E.O. 11541.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 43 is further amended by removing "[Agency]" and "[agency]" and adding "Veterans Administration" wherever "[Agency]" and "[agency]" appear.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 31

[FRL-3449-8]

FOR FURTHER INFORMATION CONTACT: Richard Mitchell, Grants Policy and Procedures Branch (PM-216F), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5297. (This is not a toll free number).

ADDITIONAL SUPPLEMENTARY INFORMATION: On March 11, 1988, as directed by President Reagan, Federal assistance awarding agencies simultaneously promulgated "common regulations [adopting] government-wide terms and conditions" for the administration of grants and cooperative agreements to State, local and Indian tribal governments. The common rule establishes consistency and uniformity among all Federal assistance awarding agencies in the administration of grants and cooperative agreements. The common rule, as part of the President's regulatory relief program, is further designed to reduce the burden of regulation and paperwork for the Environmental Protection Agency's (EPA) grantees. EPA's version of the common rule is at 40 CFR Part 31 and supersedes certain of EPA's general assistance regulations at 40 CFR Parts 30 and 33.

The President's Council on Management Improvement (PCMI) has now directed Federal assistance awarding agencies to amend the common rule to include provisions applicable to institutions of higher education, hospitals, other non-profit organizations, and commercial or for-profit entities (the so-called "A-110" organizations).

The amendatory language drafted by an interagency workgroup chaired by the Office of Management and Budget and the Department of Health and Human Services comprises, in the main, working changes to Part 31 and relatively minor additions of materials applicable to the "A-110" organizations. Two separate drafts of the proposed changes were distributed to some 30 EPA offices; only one comment was received. That comment dealt with § .37(a) which allows States to administer subgrants to "A-110" organizations under State laws and procedures or this rule. The EPA Office of the Inspector General (OIG) is concerned that when States subgrant ("pass-through") Federal funds to "A-110" entities, the States' rules and procedures also will be "passed-through." This will require Federal auditors to gain expertise in a wide variety of financial management requirements. EPA invites comments from its readers on this matter.

Because EPA added Subpart F—"Disputes" to the common rule published on March 11, 1988, it will be necessary to change the designations for Subparts F and G which are noted in the common rule now being proposed to Subparts G and H respectively when EPA's version is published.

List of Subjects in 40 CFR Part 31

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 40 of the Code of Federal Regulations be amended as set forth below.

Lee M. Thomas,
Administrator.

Date: October 14, 1988.

1. Part 31 is revised to read as set forth at the end of this document.

PART 31—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1401 et seq.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 31 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "EPA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 31.3 is amended by adding a definition for "EPA" alphabetically to read as follows:

§ 31.3 Definitions.

* * * * *

"EPA" means Environmental Protection Agency

* * * * *

c. Amend § 31.6 by adding new paragraphs (c)(1) and (d) to read as follows:

§ 31.6 Additions and exceptions.

* * * * *

(c) * * *

(1) In the Environmental Protection Agency, the Director, Grants Administration Division, is authorized to grant the exceptions.

(d) The EPA Director is also authorized to approve exceptions, on a class or an individual case basis, to EPA program—specific assistance regulations other than those which implement statutory and executive order requirements.

d. Section 31.13 is added to Subpart B to read as follows:

§ 31.13 Principal environmental statutory provisions applicable to EPA assistance awards.

Grantees shall comply with all applicable Federal laws including:

(a) Section 306 of the Clean Air Act, (42 U.S.C. 7606).

(b) Section 508 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1368).

(c) Section 1424(e) of the Safe Drinking Water Act, (42 U.S.C. 300h-3(e)).

e. Amend § 31.36 by ading new paragraphs (c)(5), (j), and (k) to read as follows:

§ 31.36 Procurement.

* * * * *

(c) * * *

(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following "Buy American" requirements in paragraphs (c)(5) (i)–(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following "Buy American" provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

* * * * *

(j) *Payment to consultants.*

(1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS–18. (Grantees may, however, pay consultrants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Public Law 99–591)

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) *Use of the same architect or engineer during construction.*

(1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(i) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(ii) The award official approves noncompetitive procurement under § 31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in § 31.36.

f. Section 31.43 is amended by adding paragraph (a)(3)(i) to read as follows:

§ 31.43 Enforcement.

(a) * * *

(3) * * *

(i) EPA can also wholly or partly annul the current award for the grantee's or subgrantee's program.

g. Add a new § 31.45 to Subpart C to read as follows:

§ 31.45 Quality assurance.

If the grantee's project involves environmentally related measurements or data generation, the grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions.

h. Add a new 40 CFR Part 31, Subpart H, consisting of § 31.90 to read as follows:

Subpart H—Disputes

§ 31.90 Disputes.

(a) Disagreements should be resolved at the lowest level possible.

(b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements.

(c) The disputes decision official's decision will constitute final agency action unless a request for review is filed by registered mail, return receipt requested, within 30 calendar days of the date of the decision.

(1) For final decisions issued by an EPA disputes decision official at Headquarters, the request for review shall be filed with the Assistant Administrator responsible for the assistance program.

(2) For final decisions issued by a Regional disputes decision official, the request for review shall be filed with the Regional Administrator. If the Regional Administrator issued the final decision, the request for reconsideration shall be filed with the Regional Administrator.

(d) The request shall include:

(1) A copy of the EPA disputes decision official's final decision;

(2) A statement of the amount in dispute;

(3) A description of the issues involved; and

(4) A concise statement of the objections to the final decision.

(e) The disputant(s) may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record.

(f) Disputants are entitled to an informal conference with EPA officials.

(g) Disputants are entitled to a written decision from the appropriate Regional or Assistant Administrator.

(h) A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

(i) A decision by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action., However, a petition for discretionary review by the Assistant Administrator responsible for the assistance program may be filed within 30 calendar days of the Regional Administrator's decision. The petition shall be sent to the Assistant Administrator by registered mail, return receipt requested, and shall include:

(1) A copy of the Regional Administrator's decision; and

(2) A concise statement of the objections to the decision.

(j) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise the disputant(s) in writing that the Regional Administrator's decision remains the final Agency action.

(k) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow the disputant(s) to submit briefs in support of the petition for review and may provide an opportunity for an informal conference in order to clarify technical or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written decision which will then become the final Agency action.

(l) Reviews may not be requested of:

(1) Decisions on requests for exceptions under § 31.6;

(2) Bid protest decision under § 31.36(b)(12);

(3) National Environmental Policy Act decisions under Part 6;

(4) Advanced wastewater treatment decisions of the Administrator; and

(5) Policy decisions of the EPA Audit Resolution Board.

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT: Ceceil Coleman, Grants Policy Specialist, Acquisition and Assistance Division, Office of Acquisition and Property Management, Room 5512, Department of the Interior, Washington, DC 20240, Phone: (202) 343–6431.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department published in the February 14, 1985 issue of the **Federal Register** (50 FR 6176), a rule which implemented Governmentwide requirements established by the Office of Management and Budget (OMB) under OMB Circulars for the administration of assistance agreements. This rule included the implementation of OMB Circular A–110, "Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

On March 11, 1988, the Department published an agency-specific preamble and amendments as part of the final common rule which revised the Department's existing regulations at 43 CFR Part 12 which implemented OMB Circular A–102.

Therefore, upon adoption of the final common rule, the Department's existing regulations at 43 CFR Part 12 which implement the March 11, 1988 (53 FR 8032), common rule and OMB Circular A–110, will be revised accordingly.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department Clearance Officer, Office of Management Improvement, Mail Stop 2248, Department of the Interior, Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

It is proposed that Title 43 of the Code of Federal Regulations be amended as set forth below.

Rick Ventura,

Assistant Secretary-Policy, Budget and Administration.

Date: October 19, 1988.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised and a cross reference is added to the end of the table of contents to read as follows:

Authority: 5 U.S.C. 301; Pub.L. 98-502; OMB Circular A-xxx, OMB Circular A-128.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

Appendix to Subpart B—Definition of Major Program as Provided in Pub. L. 98-502.

2. The heading of the appendix immediately following § 12.31 is revised to read as set forth above.

3. Subpart C of Part 12 is revised to read as set forth at the end of this document:

Subpart C—Uniform Administrative Requirements For Grants and Cooperative Agreements

General

Sec.

12.41 (____.1) Purpose and scope of this subpart.
12.42 (____.2) Scope of §§ 12.41 through 12.46.
12.43 (____.3) Definitions.
12.44 (____.4) Applicability.
12.45 (____.5) Effect on other issuances.
12.46 (____.6) Additions and exceptions.

Pre-Award Requirements

12.50 (____.10) Forms for applying for grants.
12.51 (____.11) State plans.
12.52 (____.12) Special grant or subgrant conditions for "high-risk" grantees.

Post-Award Requirements

Financial Administration

12.60 (____.20) Standards for financial management systems.
12.61 (____.21) Payment.
12.62 (____.22) Allowable costs.
12.63 (____.23) Period of availability of funds.
12.64 (____.24) Matching and cost sharing.
12.65 (____.25) Program Income.
12.66 (____.26) Non-Federal audit.

Changes, Property, and Subawards

12.70 (____.30) Changes.
12.71 (____.31) Real property.
12.72 (____.32) Equipment.
12.73 (____.33) Supplies.
12.74 (____.34) Copyrights and patents.
12.75 (____.35) Subawards to debarred and suspended parties.
12.76 (____.36) Procurement.
12.77 (____.37) Subgrants.
12.78 (____.38) Intangible property and debt instruments.
12.79 (____.39) Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

12.80 (____.40) Monitoring and reporting program performance.
12.81 (____.41) Financial reporting.
12.82 (____.42) Retention and access requirements for records.
12.83 (____.43) Enforcement.
12.84 (____.44) Termination for convenience.

After-the-Grant Requirements

12.90 (____.50) Closeout.
12.91 (____.51) Later disallowances and adjustments.
12.92 (____.52) Collections of amounts due.

Entitlements [Reserved]

Special Provisions for Research and Other Programs

12.100 (____.70) Scope of section.
12.101 (____.71) Special provisions.

Special Provisions for Commercial Organizations

12.110 (____.80) Scope of section.
12.111 (____.81) Prohibition against fee or profit.
12.112 (____.82) Real property and equipment.
12.113 (____.83) Program income.

4. Part 12 is further amended by removing "[Agency]" and "[agency]" and adding "Department" wherever "[Agency]" and "[agency]" appear.

5. In newly revised Subpart C, remove the terms "Part", "part", "Subpart", and "subpart" and add "Subpart", "subpart", "Section" and "section" respectively, wherever they appear.

§ 12.42 Scope of §§ 12.41 through 12.46.

6. The headline for § 12.42 is revised to read as set forth above.

7. Section 12.43 is amended by adding a definition for "Department" alphabetically to read as follows:

§ 12.43 Definitions.

* * * * *

"Department" includes any bureau, office or other unit of the Department of the Interior, whether in Washington, DC or in the field, and any officer or employee thereof.

* * * * *

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 13

FOR FURTHER INFORMATION CONTACT: Michael J. McCausland, Office of the Comptroller, Policy Division (202) 646-3718.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Federal Emergency Managment Agency (FEMA) intends to incorporate the final rule as Part 13 of Title 44 of the Code of Federal Regulations.

List of Subjects in 44 CFR Part 13

Accounting, Administrative practice and procedure, Grant programs—civil defense, Disaster, Hazardous materials and fire training, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 44 of the Code of Federal Regulations be amended as set forth below.

Michael J. McCausland,

Acting Chief Policy Division.

1. Part 13 is revised to read as set forth at the end of this document.

PART 13—UNIFORM ADMINISTRATIVE REQUIREMENT FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

13.1 Purpose and scope of this part.
13.2 Scope of subpart.
13.3 Definitions.
13.4 Applicability.
13.5 Effect on other issuances.
13.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

13.10 Forms for applying for grants.
13.11 State plans.
13.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

13.20 Standards for financial management systems.
13.21 Payment.
13.22 Allowable costs.
13.23 Period of availability of funds.
13.24 Matching or cost sharing.
13.25 Program income.
13.26 Non-Federal audit.

Changes, Property and Subawards

13.30 Changes.
13.31 Real property.
13.32 Equipment.
13.33 Supplies.
13.34 Copyrights and patents.
13.35 Subawards to debarred and suspended parties.
13.36 Procurement.
13.37 Subgrants.

Authority: Reorg. Plan No. 3 1978, EO 12127; EO 12148.

Cross reference: See also office of Management and Budget Notice published at 52 FR 23729, June 24, 1987

2. Part 13 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "FEMA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 13.3 is amended by adding a definition for "FEMA" alphabetically to read as follows:

* * * * *

§ 13.3 Definitions.

"FEMA" means Federal Emergency Management Agency.

* * * * *

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 74 and 92

FOR FURTHER INFORMATION CONTACT: Gary Houseknecht, Division of Assistance and Cost Policy, Room 513–D Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Phone (202) 245–7565.

ADDITIONAL SUPPLEMENTARY INFORMATION: Currently, the fiscal and administrative requirements for HHS grants are contained in two primary regulations. 45 CFR Part 92, which became effective October 1, 1988, governs most grants to states, local governments, and federally recognized Indian tribal governments. Open-ended entitlement grants to states (e.g. Aid to Families of Dependent Children, Medicaid, and Child Support Enforcement) and grants to both non-profit and for-profit private organizations are governed by 45 CFR Part 74.

If 45 CFR Part 92 is amended as proposed, it would, for the most part, replace Part 74 for grants to non-governmental organizations. Part 74 would remain in place for two purposes. It would continue to govern HHS's open-ended entitlement grants to states until such time as the Subpart reserved in Part 92 for entitlement grants is added. Part 74 would also preserve the applicability to all HHS grants (except block grants subject to 45 CFR Part 96) of certain long-standing HHS grant rules that are not covered in the government-wide "common rule" to be codified at 45 CFR Part 92.

The Part 74 provisions which will continue to apply to grants subject to Part 92 were made applicable by an amendment to Part 74 adopted simultaneously with the adoption of Part 92, on March 11, 1988 (53 FR 8078–8079). The provisions are:

1. Section 74.62(a) which simplifies submission of audit reports;
2. Section 74.173 which specifies cost principles for hospitals;
3. Section 74.174(b) which establishes certain special cost rules for nonprofit organizations;
4. Section 74.304 which describes grantee responsibilities regarding final decisions in disputes;
5. Section 74.710 which contains property rules for grants to for-profit organizations; and
6. Section 74.715 which contains the rules for use of program income under grants to for-profit organizations.

If Part 92 is adopted essentially as proposed herein, HHS will also make a number of technical and conforming amendments to Part 74. In § 74.4 "Applicability of this part.", the citations in § 74.4(a)(2) that make § 74.710 and 74.715 applicable to Part 92 grantees would be deleted because today's proposed amendments to Part 92 contain equivalent provisions. In addition, HHS would amend 45 CFR Part 74 by removing and reserving any subparts or sections that have no relevance to open-ended entitlement grants to states, and thus will not be needed in Part 74 when other kinds of grants become subject to Part 92. For example, the following subparts and appendix would be removed in their entirety:

1. Subpart J—Monitoring and reporting of program performance;
2. Subpart L—Programmatic changes and budget revisions;
3. Subpart N—Application forms; and
4. Appendix H—Attachment O, "Procurement Standards" of OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

Readers examining the proposed amendments to the common rule as to its effect on HHS grants should also bear in mind that when HHS adopted the common rule on March 11, 1988, we simultaneously amended § 92.30 by adding paragraphs (a)(1) and (d)(5) to read as follows:

Section 92.30 Changes.

(a) * * * (1) Approvals shall not be valid unless they are in writing, and signed by at least one of the following officials of the Department of Health and Human Services:

(i) The responsible Grants Officer or his or her designee;

(ii) The head of the HHS Operating or Staff Division that awarded the grant; or

(iii) The head of the Regional Office of the HHS Operating or Staff Division that awarded the grant.

* * * * *

(d) Programmatic changes * * * *

(5) Providing medical care to individuals under research grants.

* * * * *

This amendment to § 92.30 will appear in Part 92 when it is codified in Title 45 of the Code of Federal Regulations, but it does not appear in this version of the common rule because this is a generic version of the common rule containing the provisions "common" to all the participating federal agencies' rules. Also, when the amended common rule is codified for HHS in 45 CFR Part 92, subsection 92.30(d)(5) will be renumbered as (d)(6) to make room for a new subsection (d)(5) that is being added to the generic version of the common rule.

With respect to the common rule as a whole, readers interested in assessing the effects of the proposed amendments on HHS grants to non-governmental grantees will need to compare individual provisions of proposed Part 92 to language on the same topic in HHS's existing regulations at 45 CFR Part 74 "Administration of Grants." In the case of most grants administration matters presently treated in OMB Circular No. A–110, the cross-comparisons will reveal that proposed Part 92 conforms closely to rules HHS has used for many years.

For example, OMB Circular A–110 currently provides that income earned

by grantees from grant-supported activities be treated in one of three ways: it is to be deducted from total project costs, used to satisfy matching requirements, or used to finance additional program activities. Circular A–110 requires grantor agencies to specify the alternative or combination of alternatives to be used, but does not dictate a preference. In 1978, when HHS implemented Circular A–110 in 45 CFR Part 74, we designated the "deduction" alternative as the default alternative. We did this as a matter of administrative convenience, so there would be a designated alternative if the terms and conditions of any particular grant award failed for some reason to specify one. This action was not intended to create a preference for the deduction alternative, and in fact most HHS programs that have program income specify the matching alternative or the addition alternative in the terms and conditions of their grants. The government-wide common rule for grants to governmental organizations published on March 11, 1988 adopted the HHS concept of a default rule, and it survives in the proposed amendment to the common rule. (See § ____.25(g).) Thus HHS anticipates that our current requirements with respect to the use of program income will be essentially unchanged.

Likewise, HHS expects there will be little change in our grant requirements concerning rebudgeting. Circulars A–102 and A–110 both contained provision for federal agency prior approval when grantees needed to rebudget grant funds between direct cost object class categories (e.g., salaries, equipment, travel, etc.). In 1978, when HHS implemented A–110 (by amending 45 CFR Part 74 and making it applicable to non-governmental grantees) we waived these restrictions on rebudgeting for both governmental and non-governmental grantees because we had found them to be of limited value as a tool for exercising stewardship over grant funds, and because we wished to place greater reliance on grantees to manage their own projects. If § ____.30 "Changes" is adopted as proposed, HHS would again have percentage limitations on rebudgeting. However, the common rule provides for waiver of these restrictions; and in the case of most HHS grants they would be waived. HHS granting agencies have generally found that requirements for prior approval of selected types of costs (from the applicable cost principles) and for changes in the scope or objectives of projects afford the agency sufficient control over budget changes.

Attention is called to the effect that certain provisions of the common rule have on the way federal agencies issue grant requirements. These are:

1. Section ____.5 of the common rule, "Effect on other issuances," pertains to additional administrative requirements imposed by non-regulatory issuances, such as manuals and program announcements. It provides that they are superseded only if they are inconsistent with the common rule. For example, a non-regulatory issuance that advises grantees of such things as what forms to use to comply with programmatic reporting requirements and where to send all forms would be proper under this regulation. Administrative requirements which are inconsistent with the Common Rule would be authorized where required by a statute, or where approved in accordance with the exception provisions of § ____.6.

2. Section ____.6 of the common rule, "Additions and exceptions," permits additional administrative requirements to be imposed through regulations published in the **Federal Register** for codification, and by other administrative means where the addition or exception is on a case-by-case basis. The additions or exceptions authorized by this regulation for classes of grants or grantees, or on a case-by-case basis, are in addition to the special conditions authorized under § ____.12 for high risk grantees.

3. Section ____.11 concerns provisions applicable to programs requiring state plans. Subsection (b) provides that States need meet only those administrative or programmatic requirements pertaining to the state plan document that are in statutes or regulations published in the **Federal Register** for codification. This does not exempt states from the necessity to comply with proper interpretations of statutes or regulations affecting the administration and operation of a program which are issued in guidelines or manuals, or similar issuances. The use of such issuances is essential to the day-to-day operations of the programs and to provide states with guidance, often at the request of the states. However, any such interpretations must be within the scope of the statutory or regulatory provision they address.

Finally, the proposed common rule's Subpart G "Special Conditions for Grants to Commercial Organizations" is adapted from HHS's current regulations in Subpart AA of 45 CFR Part 74. Thus, although the coverage of grantees that are organized for profit would be newly added to the common rule, HHS's requirements would be preserved substantially as they are now.

List of Subjects in 45 CFR Parts 74 and 92

Accounting, Administrative practices and procedures, Grant programs—health and human services research, training, and service delivery, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

October 18, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

1. Part 92 is revised to read as set forth at the end of this document:

PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records, Retention, and Enforcement

Authority: 5 U.S.C. 301.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 92 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "HHS" is added wherever "[Agency]" and "[agency]" appear.

b. Section 92.3 is amended by adding a definition for "HHS" alphabetically to read as follows:

§ 92.3 Definitions.

* * * * *

"HHS" means the Department of Health and Human Services.

* * * * *

NATIONAL SCIENCE FOUNDATION

45 CFR Part 603

FOR FURTHER INFORMATION CONTACT: William S. Kirby, Policy Office, Division of Grants and Contracts, (202) 357–7880.

ADDITIONAL SUPPLEMENTARY INFORMATION: The proposed common rule would combine formerly separate OMB guidance to agencies for grants and cooperative agreements with state and local governments with similar guidance covering awards to universities and nonprofit organizations. The National Science Foundation proposes to join with the Department of Defense in adopting a separate rule to govern universities and nonprofit organizations. The National Science Foundation proposes this separation because its grants and cooperative agreements are awarded almost exclusively to academic and nonprofit organizations for the support of research, education, and related activities. While many of the requirements set forth in the proposed common rule are clearly applicable to all types of grantees, there are several areas of coverage with significant differences and which reflect very real differences in the character and purposes of the various organization types. Adopting separately that portion of the proposed rule relevant to research grants, universities, and non-governmental organizations is the best way for NSF to provide clear, consistent guidance for its grantees and grants officials. In final rulemaking, therefore, NSF proposes to adopt only those provisions of the rule that are applicable to universities and nonprofit organizations (nongovernmental entities). In addition, the provisions of the proposed Subpart F will be adopted as standard NSF procedure. We believe this proposed approach will simplify understanding and use of the rules by grantees and grant officials. Public comment is welcomed on this proposal to adopt a separate rule, as other agencies may wish to consider the approach in final rulemaking. Notwithstanding the issuance of any final rule, NSF will continue to rely on and expects grantees to continue following the policies and procedures found in NSF's publications and forms which have received OMB clearance. These policies and procedures, which are consistent with or less restrictive than the common rule, are found in: "Grants for Research and Education in Science and Engineering" which outlines procedures for applying for NSF grants; NSF GC–1, "Grant General Conditions", which contains the terms and conditions applicable to NSF grants; and "NSF Grant Policy Manual", which outlines NSF's grant administration policies. Where existing requirements appear inconsistent with any common rule or other regulation, grantees should consult with NSF.

List of Subjects in 45 CFR Part 603

Accounting, Administration practice and procedures, Grant Administration, Grant Programs—education, Grant Programs—science and technology, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

Jeff Fenstermacher,

Assistant Director for Administration.

1. Part 603 is added to read as set forth at the end of this document:

PART 603—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Authority: 42 U.S.C. 1870 (a).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, July 24, 1987.

2. Part 603 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "NSF" is added wherever "[Agency]" and "[agency]" appear.

b. Section 603.3 is amended by adding a definition for "NSF" alphabetically to read as follows:

§ 603.3 Definitions.

* * * * *

"NSF" means National Science Foundation.

* * * * *

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1157

FOR FURTHER INFORMATION CONTACT: Arthur Warren, Deputy General Counsel, or Laurence Baden, Grants Officer, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 682–5403.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Program Income

The National Endowment for the Arts (hereinafter "Arts Endowment"), consistent with the provisions of section 25, Program Income, intends to utilize the cost-sharing or matching method of program income in all of its grant awards and cooperative agreements.

Budget Changes

Section 30 sets forth post-award budgetary guidelines that grant recipients must follow. The authority proposed for state and local government recipients to make budgetary changes without agency approval is considerably greater than the authority proposed for nonprofit recipients. The Arts Endowment questions the rationale and appropriateness of having one set of budgetary guidelines for governmental recipients and another for nongovernmental recipients. The Arts Endowment believes that the authority proposed for state and local governments should also apply to nonprofit recipients. The Arts Endowment seeks public comment on these proposals.

The Arts Endowment directs readers to the additional supplemental information section of its preamble to the previous publication of 45 CFR Part 1157 (53 FR 8080, March 11, 1988) for additional information regarding the application of these regulations to its programs.

List of Subjects in 45 CFR Part 1157

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

Peter J. Basso,

Deputy Chairman for Management.

1. Part 1157 is revised to read as set forth at the end of this document:

PART 1157—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records, Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

Subpart G—Special Provisions for Commercial Organizations

Authority: 20 U.S.C. 959(a)(1).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1157 is further amended by removing "[Agency]" and "[agency]" and by adding "Arts Endowment" wherever "[Agency]" and "[agency]" appear.

National Endowment for the Humanities

45 CFR Part 1174

FOR FURTHER INFORMATION CONTACT: Stephen McCleary, Deputy General Counsel, or David Wallace, Grants Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786–0322.

ADDITIONAL SUPPLEMENTARY INFORMATION: Section ____.25 provides three alternatives for using program income: deduction, addition, and cost sharing or matching. It is consistent with the purposes of the Endowment's legislation that, when specifically approved in the award, grantees may retain program income and use it to support other humanities activities.

Section ____.26 establishes requirements for nonfederal audits of all governmental and nongovernmental grantees and subgrantees without regard to the amount of federal funding provided. Until further guidance is provided the Endowment will determine a threshold of funding below which compliance audits will not be required as a condition af an award.

The Endowment takes exception to the provision in § ____.30 allowing state and local grantees greater authority to make budgetary changes without agency approval than the authority for grantees that are nonprofit organizations. This distinction is not consonant with the purpose of having one common rule apply to both types of grantees and the

difference in treatment is not based on any statutory requirement. The Humanities Endowment believes that nonprofit organizations should be allowed the same degree of latitude with respect to budgetary changes as state and local governments.

Sections ____.40(f)(1) ____.41(a)(6) provide that grantor agencies may waive any performance or financial reports required by the common rule if they are not needed. Subsections 10(d)(1) and 10(d)(2)(A) of the Humanities Endowment's authorizing legislation [20 U.S.C. 959(d)] require performance and financial reports. Because of the statutory requirements, the Humanities Endowment would be unable to waive the various provisions of the common rule regarding the performance and financial reports.

The National Endowment for the Humanities directs readers to the additional supplemental information section of its preamble to the previous publication of Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 45 CFR (53 FR 8082, March 11, 1988) for additional information regarding the application of these regulations to its programs.

List of Subjects in 45 CFR Part 1174

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Part 1174 of Title 45 of the Code of Federal Regulations be amended as set forth at the end of this document.

Lynne V. Cheney,

Chairman, National Endowment for the Humanities.

1. Part 1174 is revised to read as set forth at the end of this document:

PART 1174—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property and Subawards

Reports, Records, Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

Subpart G—Special Provisions for Commercial Organizations

Authority: 20 U.S.C. 959(a)(1).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729.

2. Part 1174 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "NEH" is added wherever "[Agency]" and "[agency]" appear.

b. Section 1174.3 is amended by adding a definition for "NEH" alphabetically to read as follows:

§ 1174.3 Definitions

* * * * *

"NEH" means the National Endowment for the Humanities.

* * * * *

Institute of Museum Services

45 CFR Part 1184

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Institute of Museum Services, Room 609, 1100 Pennsylvania Avenue, NW. Washington, DC 20506, 202 786–0539.

List of Subjects in 45 CFR Part 1184

Accounting, Administration practice and procedures, Grant programs—Museums, National Boards, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

Lois Burke Shepard,

Director.

1. Part 1184 is added to read as set forth at the end of this document.

PART 1184—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre Award Requirements

Subpart C—Post Award Requirements

Financial Administration

Changes, Property, and Subawards

Authority: 20 U.S.C. 961–68.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1184 is further amended as follows:

a. "Agency" and "[agency]" are removed and "IMS" is added wherever "[Agency]" and "[agency]" appear.

b. Section 1184.3 is amended by adding a definition for "IMS" alphabetically to read as follows:

§ 1184.3 Definitions

* * * * *

"IMS" means Institute of Museum Services.

* * * * *

ACTION

45 CFR Part 1234

FOR FURTHER INFORMATION CONTACT: Margaret M. McHale, Acting Chief, Grants Branch, (202) 634–9150.

List of Subjects in 45 CFR Part 1234

Accounting, Administration practice and procedures, Grant programs—Volunteer services, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

Donna M. Alvarado,

Director.

1. Part 1234 is revised to read as set forth at the end of this document:

PART 1234—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Authority: Pub. L. 93–113; 42 U.S.C. 4951, *et seq;* 42 U.S.C. 5060.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1234 is further amended by removing "[Agency]" and "[agency]" and adding "ACTION" wherever "[Agency]" and "[agency]" appear.

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2015

FOR FURTHER INFORMATION CONTACT: Col. Patrick O'Meara, Director of Administration, (202) 653–5326, Commission on the Bicentennial of the United States Constitution, 808 17th Street NW., Washington, DC 20006

List of Subjects in 45 CFR Part 2015

Accounting, Administration practice and procedures, Grant programs—Constitution Bicentennial, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

Ronald Trowbridge,

Staff Director.

1. Part 2015 is revised to read as set forth at the end of this document:

PART 2015—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Authority: Pub. L. 98–101, as amended, and Title V of Pub. L. 99–194.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 2015 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "Bicentennial Commission" is added wherever "[Agency]" and "[agency]" appear.

b. Section 2015.3 is amended by adding a definition for "Bicentennial Commission" alphabetically to read as follows:

§ 2015.3 Definitions.

* * * * *

"Bicentennial Commission" means Commission on the Bicentennial of the United States Constitution.

* * * * *

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

49 CFR Part 18

[OST Docket No. 45888; Notice No. 88–16]

ADDRESS: Interested persons should submit comments to Docket Clerk, OST Docket No. 45888, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Charles E. Ventura, Department of Transportation , Office of Acquisition and Grant Management—M–63, 400 Seventh Street, SW., Room 9100, Washington, DC 20590, (202) 366–4286.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Background

Most significant changes are noted in the common preamble. The rule is being revised to add nongovernmental grantees and to make minor revisions to the current common rule that applies to grants and cooperative agreements to State and local governments.

Deviations

Due to existing statutes and the desire to reduce Federal red tape, the Department does not comply with some of the sections of the common rule, and now is proposing deviations from additional provisions of the common rule. Deviations that were issued on March 3, 1988, are listed in amendatory instruction 2, with some subsection numbering revisions to accommodate changes being proposed for the common rule, and minor revisions are being proposed to the deviation regarding matching share eligibility for Federal-aid highway projects in subsection 18.24(h).

Proposed additional deviations are contained in amendatory instruction 3. Comments are requested on the proposed deviations that are not required by statute. A description of new deviations follows:

Section ____.3, Definitions, "Equipment."

Section 9(j) of the Urban Mass Transportation (UMT) Act of 1964, as amended, requires that the definition of equipment include tangible nonexpendable personal property having a useful life of more that 1 year, including items with an acquisition cost of less than $5,000. The Urban Mass Transportation Administration (UMTA) has reserved the authority to establish thresholds in program guidelines concerning the use and disposition of equipment which are lower than the $5,000 threshold provided in the common rule.

Section ____.21, Payment.

Subsection ____.21(d), Reimbursement of the common rule has been revised to add a final sentence that: "The grantees and subgrantees will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement." This requirement is similar to the 30-day payment provision of the Prompt Payment Act. The Prompt Payment Act provision implementation guidelines require Federal agencies to withhold payments to contractors until near the end of the 30-day payment period. We believe that this provision could be interpreted to require a similar type of withholding of reimbursements from grantees and subgrantees. A 30-day delay provision would be inconsistent with the requirement in subsection ____.21(b), Basic standard that requires payment procedures to minimize the time lapsing between transfer of funds and disbursement. We propose to add paragraph (d)(1) to the common rule to eliminate the inconsistencies and to require payments to grantees and subgrantees as soon as practicable.

Section ____.22, Allowable Costs, and Section ____.81, Prohibition Against Profit.

Subsections 3(e), 8(e) and 9(e)(1) of the UMT Act of 1964, as amended, require maximum participation by private providers in the operation of mass transportation facilities and equipment. This provision has been interpreted as requiring, whenever possible, the use of profit-making entities, and to provide profits where they are normally paid under business transactions.

Section ____.26, Non-Federal Audits.

This section would require commercial organizations to obtain organization-wide audits that are similar to those required under the Single Audit Act. We believe that requiring commercial organizations to obtain organization-wide audits is not always the most cost effective technique for protecting the Federal interest. We propose that our grantor agencies be allowed to perform project audits for grants to commercial organizations. In some cases, a single project audit is sufficient to determine that Federal funds were properly expended. Such reviews are less costly to perform than the organization-wide audits.

Also, given the fact that commercial organizations are not normally as stabler as governmental entities and are more likely to go out of business, we propose that, where organization-wide audits are made, they be required on an annual basis rather than on a 2-year cycle.

Section ____.31, Real Property.

Subsection 3(a)(2)(A)(iii) of the UMT Act of 1964, as amended, imposes requirements on grantees to maintain UMTA-assisted facilities. UMTA enforces these requirements by establishing a method for determining the value of the Federal interest at disposition which differs from the method required in the common rule.

Section ____.32, Equipment.

Subsection 3(a)(2)(A)(iii) of the UMT Act of 1964, as amended, imposes requirements on grantees to maintain UMTA-assisted equipment. UMTA enforces these requirements by establishing a method for determining the value of the Federal interest at disposition which differs from the method in the common rule.

Section ____.37, Subgrants.

Subsection ____.37(a) of the proposed rule allow States the option of applying the provisions of the this part to their subgrantees, but does not require States to notify subgrantees which requirements must be followed. The Preamble notes that States should inform subgrantees of the requirements that they will be required to meet. We propose that a provision be included in the rule to require States to notify subgrantees of the grant administrative requirements that will be imposed on them.

Subpart G—Special Provisions for Commercial Organizations

The rule has been revised to include grants and subgrants to commercial organizations. Assistance awards to commercial organizations are rare in the Department of Transportation, and flow from very specific enabling legislation. In these few instances, the awarding agency should be allowed the flexibility to impose any controls it believes necessary to ensure that the Federal interest is adequately protected. We do not believe that these types of grantees and subgrantees should be covered in this rule. We propose to revise the rule to allow our grantor organizations the ability to impose additional requirements, as necessary, for grants and subgrants to commercial organizations.

Impact Analyses

Executive Order 12291 and DOT Regulatory Policies and Procedures

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We intend the proposed regulations to create savings for grantees by reducing the costs of administering grants. However, we do not believe that the regulations will have an annual economic effect of $100 million or more, or cause any of the other effects listed in the Order. For this reason, we have determined that these regulations are not a major rule within the meaning of the Order.

This amendment to the common rule restates, in regulatory form, most of the provisions of OMB Circular A-110, Grants and Agreements With Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, that had been implemented in our program regulations and directives. In addition, some of the provisions of the regulation that were not in the circular, or are different from the circular, will reduce the red tape burden on our grantees. Because of this, we certify that this regulation is nonsignificant under the Department of Transportation's Regulatory Policies and Procedures.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they do not affect the amount of funds provided in the covered programs, but rather modify and update administrative and procedural requirements.

Paperwork Reduction Act

The additional recordkeeping and information collection requirements included in these regulations have been submitted or are simultaneously being submitted for approval to OMB.

List of Subjects in 49 CFR Part 18

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed to amend Title 49 of the Code of Federal Regulations as set forth below.

Issued this 17th day of October, 1988 at Washington, DC.

Mimi Dawson,

Acting Secretary of Transportation.

1. Part 18 is revised to read as set forth at the end of this document.

PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records, Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

Subpart G—Special Provisions for Commercial Organizations

18.80 Scope of subpart.
18.81 Prohibition against fee or profit.
18.82 Real property and equipment.
18.83 Program income.

Authority: 49 U.S.C. 322(a).

Cross Reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. The following amendments are contained in the current Part 18, and are proposed to amend the revised Part 18.

a. Section 18.10 is amended by adding paragraph (a)(4) to read as follows:

§ 18.10 Forms for applying for grants.

(a) * * *

(4) Forms and procedures for Federal Highway Administration (FHWA) projects are contained in 23 CFR Part 630, Subpart B, 23 CFR Part 420, Subpart A, and 23 CFR Part 450.

* * * * *

b. Section 18.20 is amended by adding paragraph (d) to read as follows:

§ 18.20 Standards for management systems.

* * * * *

(d) Certain Urban Mass Transportation Administration (UMTA) grantees shall comply with the requirements of section 15 of the Urban Mass Transportation (UMT) Act of 1964, as amended, as implemented by 49 CFR Part 630, regarding a uniform system of accounts and records and a uniform reporting system for certain grantees.

c. Section 18.21 is amended by adding paragraphs (j) and (k) to read as follows:

§ 18.21 Payment.

* * * * *

(j) 23 U.S.C. 121 limits payments to States for highway construction projects to the Federal share of the costs of construction incurred to date, plus the Federal share of the value of stockpiled materials.

(k) Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

d. Section 18.22 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 18.22 Allowable costs.

* * * * *

(c) The overhead cost principles of OMB Circular A–87 shall not apply to State highway agencies for FHWA-funded grants.

(d) Sections 3(1) and 9(p) of the UMT Act of 1964, as amended, authorize the Secretary to include in the net project cost eligible for Federal assistance, the amount of interest earned and payable on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion thereof. Limitations are established in sections 3 and 9 of the UMT Act of 1964, as amended.

(e) Section 9 of the UMT Act of 1964, as amended, authorizes grants to finance the leasing of facilities and equipment for use in mass transportation services provided leasing is more cost effective than acquisition or construction.

e. Section 18.24 is amended by adding paragraphs (b)(7), and (b)(8), (c)(3), and (h) to read as follows:

§ 18.24 Matching or cost sharing.

* * * * *

(b) * * *

(7) Section 4(a) of the UMT Act of 1964, as amended, provides that the Federal grant for any project to be assisted under section 3 of the UMT Act of 1964, as amended, shall be in an amount equal to 75 percent of the net project costs. Net project cost is defined as that portion of the cost of the project which cannot be reasonably financed from revenues.

(8) Section 18(e) of the UMT Act of 1964, as amended, limits the Federal share to 80 percent of the net cost of construction, as determined by the Secretary of Transportation. The Federal share for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 percent of the net cost of such operating expense projects.

(c) * * *

(3) Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) limits in-kind service contributions under the Local Rail Service Assistance Program to "the cash equivalent of State salaries for State public employees working in the State rail assistance program, but not including overhead and general administrative costs."

* * * * *

(h) 23 U.S.C. 121(a) limits reimbursement to cost incurred by States on Federal-aid projects. Except for private donations of right-of-way, contributions and donations shall not be allowable for matching purposes on Federal-aid projects. 23 U.S.C. 323 permits privates donations of right-of-way to be used for a State's matching share, and establishes procedures for determining the fair market value of such donated right-of-way.

* * * * *

f. Section 18.25 is amended by adding paragraphs (g) (4), (5), (6), and (7) to read as follows:

§ 18.25 Program income.

* * * * *

(g) * * *

(4) Section 3(a)(1)(D) of the UMT Act of 1964, as amended, provides that the Secretary shall establish requirements for the use of income derived from appreciated land values for certain UMTA grants. Specific requirements shall be contained in grant agreements.

(5) UMTA grantees may retain program income for allowable capital or operating expenses.

(6) For grants awarded under section 9 of the UMT Act of 1964, as amended, any revenues received from the sale of advertising and concessions in excess of fiscal year 1985 levels shall be excluded from program income.

(7) 23 U.S.C. 156 requires that States shall charge fair market value for the sale, lease, or use of right-of-way airspace for non-transportation purposes and that such income shall be used for projects eligible under 23 U.S.C.

* * * * *

g. Section 18.31 is amended by adding paragraph (e) to read as follows:

§ 18.31 Real property.

* * * * *

(e) If the conditions in 23 U.S.C. 103(e) (5), (6), or (7), as appropriate, are met and approval is given by the Secretary, States shall not be required to repay the Highway Trust Fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn.

h. Section 18.36 is amended by adding paragraphs (j) through (t) to read as follows:

§ 18.36 Procurement.

* * * * *

(j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR Part 635, Subpart A.

(k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications.

(l) 46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements on the shipment of foreign made goods.

(m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661 impose Buy

America provisions on the procurement of foreign products and materials.

(n) Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Part 23 impose requirements for the participation of disadvantaged business enterprises.

(o) Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. section 1608(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

(p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.

(q) 23 U.S.C. 112(d) requires concurrence by the Secretary before highway construction contracts can be awarded, except for projects authorized under the provisions of 23 U.S.C. 117.

(r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension of work, and material changes in the scope of the work for highway construction contracts.

(s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

(t) FHWA, UMTA, and Federal Aviation Administration (FAA) grantees and subgrantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and shall award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State (or airport sponsor for FAA) qualifications-based requirements. For FHWA and UMTA programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

i. Section 18.40 is amended by adding paragraph (c)(1) to read as follows:

§ 18.40 Monitoring and reporting program performance.

* * * * *

(c) * * *

(1) Section 12(h) of the UMT Act of 1964, as amended, requires pre-award testing of new buses models.

* * * * *

j. Section 18.41 is amended by adding paragraph (f) to read as follows:

§ 18.41 Financial reporting.

* * * * *

(f) Notwithstanding the provisions of paragraph (a)(1) of this section, recipients of FHWA and National Highway Traffic Safety Administration (NHTSA) grants shall use FHWA, NHTSA or State financial reports.

3. These additional amendments are proposed to be made to Part 18.

a. Part 18 is amended by removing "[Agency]" and adding "Department of Transportation" whenever "[Agency]" and "[agency]" appear.

b. Section 18.3 is amended by adding paragraph (1) to the definition of "equipment":

§ 18.3 Definitions.

* * * * *

"Equipment" * * *

(1) Section 9(j) of the UMT Act of 1964, as amended, imposes use of a definition of equipment to include tangible nonexpendable personal property having a useful life of more than 1-year, including items with an acquisition cost of less than $5,000. The Urban Mass Transportation Administration sets minimum dollar thresholds concerning use and disposition of equipment in published program guidelines.

* * * * *

c. Section 18.21 is amended by adding paragraph (d)(1) to read as follows:

§ 18.21 Payment.

(d) * * *

(1) Notwithstanding the provision above for payments ordinarily within 30 days, Department of Transportation grantees and subgrantees will be paid as promptly as possible, and payments after the receipt of a proper request will not be withheld.

* * * * *

d. Section 18.22 is amended by adding paragraph (a)(3) to read as follows:

§ 18.22 Allowable costs.

(a) * * *

(3) Sections 3(a), 8(e) and 9(e)(1) of the UMT Act of 1964, as amended, require maximum participation by private providers in the operation of mass transportation facilities and equipment and is interpreted as requiring profit as an allowable payment to nongovernmental entities.

* * * * *

e. Section 18.26 is amended by adding paragraph (b)(1) to read as follows:

§ 18.22 Allowable costs.

(b) * * *

(1) Nothing in this part precludes grantor organizations from requiring individual project audits, or requiring organization-wide audits to be conducted on an annual basis.

* * * * *

f. Section 18.31 is amended by adding paragraph (e) to read as follows:

§ 18.31 Real property.

* * * * *

(e) Section 3(a)(2)(A)(iii) of the UMT Act of 1964, as amended, imposes requirements that grantees properly maintain UMTA-assisted facilities. UMTA enforces these use requirements by determining the method for valuing the Federal interest when the property is disposed.

* * * * *

g. Section 18.32 is amended by adding paragraph (i) to read as follows:

§ 18.32 Equipment.

* * * * *

(i) *Mass Transportation Equipment.* Section 3(a)(2)(A)(iii) of the UMT Act of 1964, as amended, imposes requirements that grantees maintain UMTA-assisted equipment. UMTA enforces these use requirements by determining the method for valuing the Federal interest when the property is disposed.

* * * * *

h. Section 18.37 is amended by adding paragraph (a)(5) to read as follows:

§ 18.37 Subgrants.

* * * * *

(a) * * *

(5) Inform subgrantees of the administrative requirements that must be followed.

* * * * *

i. Section 18.80 is amended by adding paragraph (b) to read as follows:

§ 18.80 Scope of this subpart.

* * * * *

(b) Notwithstanding the provisions of this part, grantor organizations are authorized to impose additional requirements, as necessary, for grants and subgrants to commercial organizations.

* * * * *

Text of the Common Rule

The text of the common rule as proposed by the agencies in this document appears below.

PART___—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial Administration

Changes, Property, and Subawards

Reports, Records, Retention, and Enforcement

Subpart D—After-the-Grant Requirements

Subpart E—Entitlement [Reserved]

Subpart F—Special Provisions for Research and Other Programs

Subpart G—Special Provisions for Commercial Organizations

Subpart A—General

§ ___.1 Purpose and scope of this part.

The part establishes uniform administrative requirements for Federal grants and cooperative agreements and subawards to governments and nongovernmental organizations.

§ ___.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ ___.3 Definitions.

As used in this part:

"Accrued expenditures" mean the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the grantee for which no current services or performance by the grantee is required.

"Acquisition cost" of an item of purchased equipment means the net invoice unit price of the equipment including the cost of modifications, attachments, accessories or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Administrative" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Awarding agency" means:

(1) With respect to a grant, the Federal agency, and

(2) With respect to a subgrant, the party that awarded the subgrant.

"Cash contributions" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation. Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"Contract" means a procurement contract under a grant or subgrant and means a procurement subcontract under a contract.

"Cost sharing or matching" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee shall use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditure report" means: (1) For nonconstruction grants, the SF–269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF–271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"Funding period" means the period of time when Federal financial assistance is available for obligation by the grantee.

"Government" means a State or local government or a federally-recognized Indian tribal government.

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in

the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee is not required to account on an actual cost basis.

"Grantee" means the government or nongovernmental organization to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"Intangible property and debt instruments" means:

(a) Intangible property, including trademarks, copyrights, patents and patent applications (except for a "subject invention" as the term is used in 37 CFR Part 401), and

(b) Such property as loans, notes, and other debt instruments, whether considered tangible or intangible.

"Local government" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government. The term does not include institutions of higher education and hospitals.

"Nongovernmental organization" means a public or private institution of higher education, a public or private hospital, an Indian tribe or an Indian tribal organization which is not a federally-recognized Indian tribal government, a quasi-public or private nonprofit organization or a commercial organization. The term does not include an individual, Federal agency, foreign or international organization (such as an agency of the United Nations), Government-owned contractor operated facility, or research center providing continued support for mission oriented large scale programs that are Government-owned or controlled or are developed as a federally funded Research and Development Center under Office of Federal Procurement Policy letter 84–1.

"Obligations" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"OMB" means the United States Office of Management and Budget.

"Outlays" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services, performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"Prior approval" means written approval by the authorized official evidencing prior consent.

"Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Share", when referring to the awarding agency's portion of real property, equipment or supplies, means the percentage of its acquisition cost paid with the Federal funds provided. Ordinarily this will be the same percentage as the awarding agency's portion of the acquiring party's total costs (but not including the value of third party in-kind contributions) recorded under the grant to which the acquisition cost of the property was charged. However, if regulations, applications or grant awards indicate a higher level of Federal participation in the property acquisition than in other activities under the grant, the higher percentage shall apply. For property acquired on an amortized basis over more than one grant funding period, the Federal share of the property will be the percentage of the amount of paid-in equity at time of disposition represented by the sum of the individual amounts of Federal participation during each of the grant funding periods involved.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of institutions of higher education, hospitals and units of local government. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"Subgrantee" means the legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"Supplies" means all personal property excluding "equipment" and "intangible property and debt instruments" as defined in this section.

"Suspension" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from its inception.

"Terms of a grant or subgrant" means all requirements of the grant or

subgrant, whether in statute, regulations, or the grant award.

"Third party in-kind contributions" means property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant award.

"Unliquidated obligations" for reports prepared on a cash basis means the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"Unobligated balance" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ ____.4 Applicability.

(a) *General.* This part applies to all grants and subgrants to governments and nongovernmental organizations except where:

(1) A provision is inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § ____.6, or

(2) In the case of:

(i) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant);

(ii) Entitlement grants to carry out the following programs of the Social Security Act:

(A) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)(19)(G); HHS grants for WIN are subject to this part);

(B) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(C) Foster Care and Adoption Assistance (Title IV–E of the Act);

(D) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(E) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(iii) Entitlement grants under the following programs of The National School Lunch Act:

(A) School Lunch (section 4 of the Act),

(B) Commodity Assistance (section 6 of the Act),

(C) Special Meal Assistance (section 11 of the Act),

(D) Summer Food Service for Children (section 13 of the Act), and

(E) Child Care Food Program (section 17 of the Act).

(iv) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(A) Special Milk (section 3 of the Act),

(B) School Breakfast (section 4 of the Act), and

(C) State Administrative Expenses under the Child Nutrition Act (section 7 of the Act).

(v) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act);

(vi) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(2)(ii) of this section;

(vii) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(viii) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children);

(ix) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)); and

(x) Funds awarded under programs of student financial assistance authorized under Subparts 1 and 2 of Part A, and under Parts B, C, D, and E of Title IV of the Higher Education Act of 1965, as amended.

(b) *Entitlement programs.* Entitlement programs enumerated in paragraphs (a)(2)(ii)–(vii) of this section are subject to Subpart E.

§ ____.5 Effect on other issuances.

All other administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § ____.6.

§ ____.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part [agency] shall not impose additional administrative requirements except in regulations published in the Federal Register for codification.

(b) Exceptions for classes of grants or grantees may be authorized by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by [agency].

Supbart B—Pre-Award Requirements

§ ____.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section does not apply to formula grant programs that do not require applicants to apply for funds on a project basis.

(2) Subject to approval of OMB under the Paperwork Reduction Act of 1980, Federal agencies may develop forms and instructions to be used by nongovernmental organizations.

(3) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by [agency] with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers.

(4) A grantee applying for additional funding (such as a continuation or

supplemental award) or amending a previously submitted application needs to subject only the affected pages and does not need to submit pages with information that is still current.

§ ____.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372 "Intergovernmental Review of Federal Programs." States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* For a State plan document, a State needs to meet only Federal administrative or programmatic requirements that are in statutes or regulations published in the **Federal Register** for codification.

(c) *Assurances.* In each plan the State shall include an assurance that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State shall amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations or

(2) A material change in any State law, organization, policy or State agency operation. The State shall obtain approval for the amendment and its effective date but needs to submit for approval only the amended portions of the plan.

§ ____.12 Special grant or subgrant conditions for high-risk grantees.

(a) A grantee or subgrantee may be considered high-risk if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, then, notwithstanding § ____.6, special conditions and/or restrictions that correspond to the high-risk condition shall be included in the award.

(b) Special conditions or restrictions may include but are not limited to:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

Financial Administration

§ ____.20 Standards for financial management systems.

(a) A State shall expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees shall adequately safeguard all such property and must assure that it is used soley for auhtorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant award. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant awards must be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees shall establish reasonable procedures to ensure the recepit of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee shall make drawdowns as close as possible to the time of making disbursements. Grantees shall monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any time subsequent to award.

§ ____.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which [agency] makes payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment must minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees must be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement is the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, [agency] shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee must be based on the grantee's or subgrantee's actual rate of disbursement. Grantees and subgrantees may submit requests for reimbursement monthly, and submit them more often if authorized by the awarding agency. The grantee and subgrantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(e) *Working capital advances.* If a grantee or subgrantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the awarding agency has determined that reimbursement is not feasible because the grantee or subgrantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee or subgrantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee or subgrantee for its actual cash disbursements. The working capital advance method of payment must not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions; or

(ii) The grantee or subgrantee is delinquent on a debt to the United States.

(2) Cash withheld for failure to comply with grant award conditions but without suspension of the grant, must be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments must be made in accordance with § ____.43(c).

(3) [Agency] shall not make payment to a grantee for amounts that are withheld by the grantee or its subgrantees from payment to contractors to assure satisfactory completion of work. [Agency] shall make payments to a grantee when the grantee or its subgrantee actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). Additional information may be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall not be required to maintain a separate bank account except when required under a "checks-paid" letter of credit.

(i) *Interest earned on advances.* (1) Unless exempted under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j), a grantee and subgrantee shall account for interest earned on advances of Federal funds as required under paragraphs (i)(2) and (3) of this section.

(2)(i) A grantee and subgrantee shall promptly, but at least annually, remit or credit the [agency] interest earned on advances of Federal grant funds.

(ii) A grantee and subgrantee may keep interest earned on all advances of Federal grant funds up to $250 per the fiscal year for the grantee or subgrantee.

(3) A grantee and subgrantee shall maintain advances of Federal grant funds in interest-bearing accounts, unless—

(i) The grantee or subgrantee receives total Federal advances under grants of less than $120,000 per year; or

(ii) The best reasonably available interest-bearing account would—

(A) Not earn interest in excess of $250 per year on Federal cash balances; or

(B) Entail bank service charges totaling more than the amount of interest that would be earned; or

(C) Require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

§ 2.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds must be used only for.

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Federally-recognized Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	Circular A-122.
Educational institutions	OMB Circular A-21.

For the costs of a—	Use the principles in—
Commercial organization other than a hospital and an organization named in Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ _____.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee shall liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ _____.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor award under the assistance award. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost-sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant awards.* Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *Costs or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of a grant award if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant award, a Federal procurement contract, or any other award of Federal funds.

(3) *Costs financed by program income.* Cost financed by program income, as defined in § _____.25, shall not count towards satisfying a cost-sharing or matching requirement unless they are expressly permitted in the terms of the assistance award (This use of general program income is described in § _____.25(g).)

(4) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost-sharing or matching requirement unless other provisions of the grant award expressly permit this kind of income to be used to meet the requirement.

(5) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of grantees and subgrantees or cost-type contractors. These records must show how the value-placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(6) *Special standards for third party in-kind contributions.* (i) Third party as in-kind contributions may satisfy a cost-sharing or matching requirements only when the payments would be allowable costs if the party receiving the contributions were to pay for them.

(ii) Some third party in-kind contributions are goods and services that would have been an indirect cost if the grantee, subgrantee, or contractor had been required to pay for them. Cost-sharing or matching credit for such contributions may be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost-sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee); or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost-sharing or matching purposes must conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals must be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market, in either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the service must valued at the employee's regular rate of pay. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution must be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution must be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and lands.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property depends upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost-sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In

the case of a subgrant, the terms of the grant award may require that the approval be obtained from agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in §_____.22 in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction of facilities acquisition project, the current market value of that property may be counted as cost-sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in building. In these cases, agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§_____.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant award and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant award during the funding period.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant award, costs incident to the generation of program income may be deducted, if not already charged to the grant, from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant award or [agency] regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, patent applications, trademarks and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant award or [agency] regulations as program income. (See § ____.34.]

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ ____.31 and ____.32.

(g) *Use of program income.* Program income must be deducted from outlays which may be both Federal and non-Federal as described below, unless the [agency] regulations or the grant award specify another alternative (or a combination of the alternatives). In specifying alternatives, [agency] may distinguish between income earned by grantees and income earned by subgrantees and between the sources, kinds, or amounts of income. When [agency] authorizes the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Unless the awarding agency specifies otherwise, program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless [agency] authorizes otherwise. Program income which the grantee did not anticipate at the time of the award must be used to reduce [agency] and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant award by [agency] and the grantee. The program income must be used for the purposes and under the conditions applicable to the use of the grant funds.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost-sharing or matching requirement of the grant award. The amount of the Federal grant award remains the same.

(h) *Income after funding period.* There are no Federal requirements governing the disposition of program income earned after the end of the funding period, unless the terms of the grant award [agency] regulations provide otherwise.

§____.26 Non-Federal audit

(a) *Governments.* Governmental grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501–7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Nongovernmental organizations.* Non-governmental grantees and subgrantees shall obtain audits made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions, or judgements. They shall meet the independence criteria along the lines of the U.S. General Accounting Office publication Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the agreements. It is not intended that each agreement awarded to the grantee be examined. Generally, examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grants and other agreements. Such tests would include an appropriate sampling of Federal agreements. Examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than every two years. The frequency of these examinations shall depend upon the nature, size, and the complexity of the activity. These examinations do not relieve Federal agencies of their audit

responsibilities, but may affect the frequency and scope of such audits.

(c) *Oversight of subgrantee audits.* Grantees shall:

(1) Determine whether subgrantees have met the audit requirements applicable to their kind of organization. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to grantees are not required to have a single audit performed. Grantees should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditures of Federal funds.

(2) Determine whether the subgrantee spent Federal grant funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations:

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to access to the records and financial statements.

(d) *Auditor selection.* In arranging for audit services, § _____.36 shall be followed.

Changes, Property, and Subawards

§ _____.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § _____.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (l) of this section do not.

(c) *Budget changes.* (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities of a grant if—

(A) The grantee or subgrantee is a government;

(B) The cumulative amount of transfers exceeds or is expected to exceed 10% of the current total approved budget; and

(C) The awarding agency's share exceeds $100,000;

(iii) Unless waived by the awarding agency, transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities of a grant if—

(A) The grantee or subgrantee is a nongovernmental organization; and

(B) The cumulative amount of transfers exceeds or is expected to exceed 5% of the current total approved budget.

(iv) Transfer of funds allotted for trainee costs (stipends, tuition and fees) to other expense categories.

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee shall obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award, including the absence of an approved project director or principal investigator for more than 3 months. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § _____.36 but does not apply to the procurement of equipment, supplies, and general support services.

(5) If a grantee or subgrantee wants to transfer a grant to a substitute organization, the grantee or subgrantee shall request the awarding agency to approve the transfer of the grant or subgrant to a substitute grantee or subgrantee.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A grantee may request prior approval of a budget revision by letter or submission of revised pages of the approved application. The request must clearly indicate the activities and/or budget categories affected by the request and include a justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § _____.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee shall promptly review such request and shall approve or disapprove the request in writing. A grantee shall not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee shall obtain the [agency]'s approval before approving the subgrantee's request.

§ _____.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant vests upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property must be used for the originally authorized purpose as long as needed for that purpose. The grantee or subgrantee shall obtain prior approval from [agency] for the use of real property in other projects when the recipient determines that the real property is no longer needed for the purposes of the original project. Use in other projects shall be limited to those under other federally sponsored projects (i.e., grants or other agreements) or

programs that have purposes consistent with those authorized for support by [agency]. The grantee shall not dispose of or encumber its title or other interests without prior written approval from [agency].

(c) *Insurance.* Immediately upon acquiring real property with Federal grant support, a nongovernmental grantee or subgrantee shall obtain the following kinds of insurance:

(1) A title insurance policy that insures the fee interest in the real property for an amount not less than the purchase price of the property. The cost of purchase of title insurance is an allowable charge to the grant in proportion to the amount of Federal participation in the property.

(2) An insurance policy that insures against the partial and total physical destruction the full appraised value at the time of purchase. The nongovernmental organization shall maintain an insurance policy that contains a clause that increases the value of the insurance in proportion to the increase in land values in the area of the insured property. The nongovernmental organization shall maintain the insurance policy for the period of time the property is owned by the grantee, unless there is a limitation on the Government's interest (e.g., 20 years under certain construction grant authorities). Insurance charges are allowable charges to the grant during the period of grant support in proportion to the amount of Federal participation in the property.

(3) Flood insurance as required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4002, 4012a, 4105) as amended.

(4) The awarding agency may waive the requirements of paragraphs (c) (1) and (2) of this section if the nongovernmental organization can show that it has sufficient resources to self-insure against the risks involved, or [agency] has determined that such insurance is not necessary.

(d) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee shall request disposition instructions from the awarding agency. The instructions must provide for one of the following alternatives:

(1) *Retention of title.* The grantee or subgrantee shall retain title after compensating the awarding agency for its share. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* The grantee or subgrantee shall sell the property and compensate the awarding agency for its share after the deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* The grantee or subgrantee shall transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee must be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ ___.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant vests upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State shall use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Subgrantees of States shall follow the equipment requirements imposed upon them by States. Other grantees and subgrantees shall follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment must be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use does not interfere with the work on the projects or programs for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered, and treated as program income to the grant, if appropriate.

(3) Notwithstanding the encouragement in § ___.25(a) to earn program income, the grantee or subgrantee shall not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place must as a minimum, meet the following requirements:

(1) Equipment records must be maintained that include a description of the equipment a serial number or other identification number, the source of equipment, who holds title, the acquisition date, and cost of the equipment, percentage of Federal participation in the cost of the equipment, the location, use and condition of the equipment and any ultimate disposition data including the date of disposal and sale price of the equipment.

(2) A physical inventory of the equipment must be taken and the results reconciled with the equipment records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the equipment in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the equipment, proper sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment must be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency must be compensated

for its share after the deduction of any actual and reasonable selling expenses.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(4) If the grantee is instructed to ship the equipment to a new location, the awarding agency shall reimburse the grantee for any reasonable shipping and interim storage costs incurred.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title remains vested in the Federal Government.

(2) Grantees or subgrantees shall manage the equipment in accordance with [agency] rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee shall request disposition instructions from the [agency].

(g) *Right to transfer title.* [Agency] reserves the right to transfer title to grant acquired equipment to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers are subject to the following standards:

(1) The equipment must be identified in the grant or otherwsie made known to the grantee in writing.

(2) [Agency] shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the [agency] fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow paragraph (e) of this section.

(3) When title to equipment is transferred, the grantee must be compensated for its share.

(h) *Exempt equipment.* When statutory authority exists (for example P.L. 85–934, 42 U.S.C. 1892), agency may vest title to the grantee in equipment purchased with grant funds by nonprofit institutions of higher education or by nonprofit organizations, whose primary purpose is the conduct of scientific research. When title is vested to the grantee under this authority, the grantee has no further obligation to the Federal Government.

§ _____.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant vests upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unvested supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the grant support and if the supplies are not needed for any other federally sponsored programs or projects the grantee or subgrantee shall compensate the awarding agency for its share.

§ _____.34 Copyrights and patents.

(a)(1) A grantee or subgrantee may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under the grant, subgrant, or contract under a grant or subgrant.

(2) Agency reserves, for Federal Government purposes, a royalty-free, nonexclusive, and irrevocable license to:

(i) Reproduce, publish, or otherwise use the work; and

(ii) Authorize others to reproduce, publish, or otherwise use the work.

(b) Grantees and subgrantees are subject to government-wide regulations governing patents and inventions issued by the Department of Commerce at 37 CFR Part 401.

§ _____.35 Subawards to debarred and suspended parties.

Grantees and subgrantees, including States, shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs in violation of the regulations implementing Executive Order 12549, "Debarment and Suspension."

§ _____.36 Procurement

(a) *States.* When procuring property and services under a grant, a State shall follow the same policies and procedures it uses for procurements from its non-Federal funds. The State shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Subgrantees of States shall follow the procurement requirements imposed upon them by States. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees shall use their own procurement procedures and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees shall maintain a contract administration system which ensures that contractor perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees shall maintain a written code of standards of conduct governing the performances of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in the selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his or her immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State of local law or regulations, such standards or conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's, officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures must provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking our procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental or multi-organizational agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees shall maintain records sufficient to detail the significant history of a procurement. These records must include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees may use time and material type contracts' only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies shall not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees shall have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with [agency] Reviews of protests by the [agency] are limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities); and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by [agency] other than those specified above must be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business.

(ii) Requiring unnecessary experience and excessive bonding.

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts.

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees shall have written selection procedures for procurement transactions. These procedures must ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand that must be met by offerors shall be clearly stated; and

(ii) Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees shall not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (d)(2)(i) of this section apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids must be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which must include any specifications and pertinent attachments, and must define the items or services in order for the bidder to properly respond;

(C) All bids must be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals must be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees must have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards must be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services although A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement does not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.* (1) The grantee and subgrantee shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps must include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring the small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees shall perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement situation, but as a starting point, grantees shall make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis is necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis must be used in all other instances to determine the reasonableness of the proposed contract price.

(2) If profit or fee is included in the price, grantees and subgrantees shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Grantees and subgrantees must incur costs or prices based on estimated costs for contracts and grants or subgrants only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §——22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees shall make available, when asked by the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review

is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally takes place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications. This kind of review is usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees shall, on request, make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee is exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and procurement contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification must not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Agencies may require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (contracts other than small purchases);

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (all contracts in excess of $10,000);

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60) (all construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (all contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5) (construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5) (construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers).

(7) Notice of agency requirements and regulations pertaining to reporting.

(8) Notice of agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Federal requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, agency the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

§ ____.37 Subgrants.

(a) *States.* Shall follow State law and procedures when awarding and

administering subgrants (whether on a cost reimbursement or fixed amount basis) However, States are not precluded from applying the provisions of this part to their subgrantees. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees comply with requirements imposed upon them by Federal statue and regulation:

(3) Ensure that a provision for compliance with § ____.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administrating subgrants (whether on a cost reimbursement or fixed amount basis. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees comply with requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* The requirements throughout this part that are imposed on subgrantees do not create any direct relationship between [agency] and a subgrantee, unless explicitly stated. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section ____.10;

(2) Section ____.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § ____.21; and

(4) Section ____.50.

§ ____.38 Intangible property and debt instruments.

Title to intangible property and debt instruments acquired under a grant or subgrant vests upon acquisition in the grantee or subgrantee respectively. The grantee or subgrantee shall use that property for the originally authorized purpose, and the grantee or subgrantee shall not dispose of or encumber the intangible property and debt instruments or interests in the intangible property and debt instruments. When no longer needed for the originally authorized purposes, the grantee or subgrantee shall dispose of the property as provided in section ____.32(e).

§ ____.39 Grant property trust relationship and notices.

Real property, equipment, and intangible property and debt instruments that are acquired or improved with Federal grant funds are held in trust by the grantee or subgrantee as trustee for the beneficiaries of the project or program under which the property was acquired or improved. [agency] may require nongovernmental grantees to place liens or other appropriate notices of record to indicate that property has been acquired or improved with Federal grant funds, and that use and disposition conditions apply to the property.

Reports, Records, Retention, and Enforcement

§ ____.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activites to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* If [agency] decides that performance information found in subsequent applications contains sufficient information to meet its programmatic needs, it may require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by [agency] this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance report must not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance reports are due 90 days after the expiration or termination of grant support. If a grantee submits a request justifying the need for extension of the due date for any performance report [agency] may extend the due date for the report. In addition, [agency] may waive requirements for unnecessary performance reports.

(2) Performance reports must at a minimum contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) The [agency] shall not require grantees to submit more than the original and two copies of performance reports.

(4) Grantees shall adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, Federal agencies rely heavily on certified percentage-of-completion data and on-site technical inspection to monitor progress under construction grants and subgrants. [Agency] may require additional formal performance reports only when considered necessary, but never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee shall inform [agency] as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objectives of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) [agencies] may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) [agencies] may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee is still able to meet its performance reporting obligations to [agency].

§ ____.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees shall use only the forms

specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to [agency], or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees are not required to apply the forms prescribed in this section in dealing with their subgrantees. However, grantees (other than States) shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. [agency] may issue substantive supplementary instructions only with the approval of OMB. [agency] may shade out or instruct the grantee to disregard any line item that [agency] finds unnecessary for its decisionmaking purposes.

(4) Grantees are not required to submit more than the original and two copies of forms required under this part.

(5) [agency] may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. [agency] may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) [agency] may waive any report required by this section if not needed.

(7) [agency] may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report.*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee shall report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If [agency] requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

(3) *Frequency.* [agency] may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If [agency] does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(4) *Due date.* (i) When reports are required on a quarterly or semiannual basis, they are due 30 days after the reporting period.

(ii) When required on an annual basis, they are due 90 days after the grant year except for cases where [agency] has extended the deadline for liquidation of obligations, as provided in §§ ——.23 and ——.50. In such instances, the report shall be due 90 days after the extended deadline.

(iii) Final reports are due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter of credit, Treasury check advances of electronic funds transfer, the grantee shall submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) [agency] uses these reports to monitor cash advanced to grantees and to obtain from grantees disbursement or outlay information for each grant. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When the [agency] considers such action necessary and feasible, it may require the grantees to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic funds transfer is authorized at an annualized rate of one million dollars or more, the [agency] may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments must be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form must not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants must also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in paragraph (b)(3) of this section.

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants must be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. [agency] may, however, prescribe the Request for Advance or Reimbursement form, specified in paragraph (d) of this section, instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in paragraph (b)(3) of this section.

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee shall report its outlays to the [agency] using Standard Form 271. Outlay Report and Request for Reimbursement for Construction Programs. [agency] shall provide any necessary special instruction. However, frequency and due date are governed by paragraphs (b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances must be requested on the form specified in paragraph (d) of this section.

(iii) [agency] may substitute the Financial Status Report specified in paragraph (b) of this section for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs are to be governed by paragraph (b)(2) of this section.

§ _____.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant award, or

(ii) Otherwise reasonbly considered as pertinent to program regulations or the grant award.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § _____.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency shall request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintanined by [agency] the 3-year retention requirement does not apply to the grantee or subgrantee.

(c) *Starting date of retention period—*(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In cases where grantees must report income after the period of grant support, the retention period for the records pertaining to the income earned during that period starts at the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation must be submitted to [agency] (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to [agency] (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts at end of the fiscal year (or other accounting period) covered by the proposal, plan or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records—*(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives has the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records owned and possessed by the grantee. Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ _____.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency.

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program.

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency shall provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a grantee or a subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective data of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a grantee or subgrantee from

"Debarment and Suspension" under E.O. 12549 (see §_____.35).

§_____.44 Termination for convenience.

Except as provided in § —.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

(b) By the grantee or subgrantee upon sending to the awarding agency written notification, setting forth the reasons for such termination, the effective date, and the portion to be terminated, in the case of partial termination. However, if the awarding agency determines in the case of partial termination that the remaining portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety under either § —.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§_____.50 Closeout.

(a) *General* [agency] shall close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b)(1) Liquidation of obligations. A grantee shall liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or other period specified in a program regulation).

(2) [agency] may extend this deadline at the request of the grantee.

(c) *Reports.* Within 90 days after the expiration or termination of the grant (or as specified in program regulations), the grantee shall submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, [agencies] may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable.)*

(3) *Final request for payment (SF–270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § _____.32(f), a grantee shall submit an inventory of federally owned property (as distinct from property acquired with grant funds) for which it is accountable because of the grant and request disposition instructions from the [agency] of property no longer needed.

(d) *Cost adjustment.* Within 90 days after receipt of reports in paragraph (c) of this section, [agency] shall make upward or downward adjustments to the allowable costs.

(e) *Cash adjustments.* (1) [agency] shall make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee shall immediately refund to [agency] any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

(f) *Continuing awards.* A grantee administering one or more grants on a continuing basis shall make an fiscal year annual accounting of ongoing grant operations which shall include the requirements of paragraphs (b), (c)(1), (c)(3) and (c)(5) of this section.

§_____.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The right of [agency] to disallow costs and recover funds on the basis of a later audit or other review;

(b) The obligation of the grantee to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § _____.42;

(d) Property management requirements in §§ _____.31 and § _____.32; and

(e) Audit requirements in § _____.26.

§_____.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other request for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the [agency] shall charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II).

Subpart E—Entitlement [Reserved]

Subpart F—Special Provisions for Research and Other Programs

§ ____.70 Scope of subpart.

This subpart establishes provisions that [agency] applies to some grants for research and other programs. [agency] specifies the application of these provisions in regulations or grant awards.

§ ____.71 Special provisions.

The following special provisions shall apply to grants subject to this subpart:

(a) The requirement for prior approval of expenditures under the applicable cost principles does not apply. (See§ ____.22(b)).

(b) Prior approval is required for preagreement costs incurred more than 90 days before the beginning date of the award. The grantee incurs costs at its own risk should Federal funding not occur.

(c) The grantee may extend a project without prior approval for a period not to exceed 12 months after the expiration of the funding period if:

(1) The extension does not require the obligation by [agency] of additional Federal funds;

(2) The extension does not involve any change in the approved objectives or scope of the project; and

(3) The grantee notifies the [agency] in writing at least 10 days before the end of the funding period.

(d) A grantee may carry over from one funding period to the next funding period any unobligated balance of funds. [Agency] may require the grantee to notify [agency] (e.g., on the Financial Status Report) of the amount of the unobligated balance that was carried over.

Subpart G—Special Provisions for Grants and Subgrants to Commercial Organizations

§ ____.80 Scope of subpart.

(a) This subpart contains provisions that apply to grants and subgrants to commercial organizations. These provisions are in addition to other applicable portions of this part, or are exceptions for awards to organizations from other provisions of this part.

§ ____.81 Prohibition aganist fee or profit.

Attention is directed to § ____.22(a), which provides, in effect, that no grant funds may be paid as fee or profit to grantee or subgrantee.

§ ____.82 Real property and equipment.

(a) *Scope* (1) This section applies to real property and equipment that are acquired under a grant or subgrant to a commercial organization.

(2) A grantee that is not a commercial organization may take title to property acquired under a subgrant to a commercial organization. If a grantee takes title to such property, the property will be considered as acquired by the grantee under its grant, and this section will not apply to the property.

(b) *Applicable rules.* (1)(i) Property subject to this section is exempt from §§ ____.31, ____.32, ____.38 and ____.39. Instead the clause entitled "Government Property" in 48 CFR 52.245–5 is deemed to be in every grant or subgrant to a commercial organization and property purchased with grant funds is treated as "Government furnished property" under that clause.

(ii) For the purpose of paragraph (b)(1)(i) of this section, the terms "contract" and its derivatives in that clause are considered to refer to the grant or subgrant under which the property is acquired, "subcontract" and its derivatives to refer to any subaward under that grant or subgrant, and "contracting Officer" to refer to the authorized [awarding] official.

(2) Records subject to the Government Property clause are exempt from § ____.42.

(c) *Approval for acquisition.* A grantee or subgrantee shall not acquire property to be subject to this section without the prior approval of the awarding agency.

§ ____.83 Program income.

The additional costs alternative described in § —.25(g) may not be applied to general program income earned by a grantee that is a commercial organization.

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BILLING CODES 3410–01–M; 6450–01–M; 8025–01–M; 7510–01–M; 3510–FE–M; 4710–24–M; 1616–01–M; 8230–01–M; 4210–32–M; 4830–01–M; 4410–18–M; 4510–23–M; 6372–01–M; 3810–01–M; 4000–01–M; 7515–01–M; 8320–01–M; 6560–50–M; 4310–RF–M; 6718–01–M; 4150–04–M; 7555–01–M; 7537–01–M; 7536–01–M; 7536–01–M; 6050–28–M; 6340–01–M; 4910–62–M

federal register

Friday
November 4, 1988

Part IV

Environmental Protection Agency

TSCA Chemical Substance Inventory; Removal of 45 Incorrectly Reported Chemical Substances From the TSCA Inventory; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-81014A; FRL-3456-7]

TSCA Chemical Substance Inventory; Removal of 45 Incorrectly Reported Chemical Substances From the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA, in an earlier notice published in the **Federal Register** of January 14, 1988 (53 FR 949), announced its intent to remove from the toxic Substances Control Act (TSCA) Chemical Substance Inventory 49 chemical substances which were believed to have been incorrectly reported and listed. Fourteen comments were received in response to the January 14, 1988 notice. EPA has determined that four of the chemical substances mentioned in the January 14, 1988 notice have been in manufacture prior to the date of the notice and the remaining 45 chemical substances were incorrectly reported and listed on the Inventory. Accordingly, the 45 chemical substances are deleted from the TSCA Inventory as of the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistant Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

A. Background

EPA announced in the **Federal Register** of January 14, 1988 (53 FR 949), its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 49 chemical substances which were believed to have been incorrectly reported and listed. Prior to the January 14, 1988 notice, persons who had originally reported the 49 chemical substances informed EPA that the chemical identities they reported to EPA and included on the Inventory were incorrect. The correct identities for these 49 chemical substances have been provided by the original submitters and added to the Agency's Master Inventory File. EPA reviewed each of these 49 chemical substances, as originally reported, to determined whether any other person had also reported the same chemical substance for the Inventory. No other manufacturers were found at the time. Therefore, in accordance with established EPA guidelines stating that an erroneously or incorrectly reported chemical substance should be removed from the Inventory, EPA announced its intent in the **Federal Register** of January 14, 1988.

The **Federal Register** notice of January 14, 1988, solicited public comments on the proposed removal action. The Agency was specifically interested in knowing whether any of the 49 chemical substances had been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulations (40 CFR Part 7810.2(p)), by anyone during the period of January 1, 1975 through January 14, 1988. The Agency was also interested to know whether any person could show that any of the 49 chemical substances could have been properly reported for the Inventory. EPA also solicited comments from anyone who believed that any of the chemical substances should not be removed from the TSCA Inventory for any reason.

EPA received 14 comments, including a congressional inquiry, in response to the January 14, 1988 **Federal Register** notice. Except for one of the commenters, all others requested that certain chemical substances not be removed from the Inventory. One comment, contributed by the submitter of six of the chemical substances included in the notice, expressed approval for the deletion of these six chemical substances since these submissions had already been corrected and the chemical substances were not being manufactured by this company.

B. Substances Not To Be Removed

After reviewing the comments received, the Agency has decided not to remove from the Inventory the chemical substances identified by the following Chemical Abstracts Service (CAS) Registry Numbers and Index Names:

12237-62-6	C.I. Pigment Violet 27.
25035-84-1	Propanoic acid, ethenyl ester, homopolymer.
37569-89-4	poly(oxy-1,2-ethanediyl),. alpha.-(3-chloro-2-hydroxypropyl)-.omega.-(3-chloro-2-hydroxypropoxy)-.
68611-64-3	Urea, reaction products with formaldehyde.

The submitters of the comments concerning these four chemical substances provided evidence to indicate that these substances have been in commercial production prior to January 14, 1988. Upon a careful review of the evidence submitted, the Agency has determined that the four chemical substances should remain on the Inventory and premanufacture notifications (PMN) will therefore not be required for the manufacture of these substances.

C. Substances That Are Removed From the Inventory

One of the commenters, requested that the Agency do not delete a specific chemical from the Inventory. The Agency reviewed the information available regarding this chemical substance and the circumstances surrounding its inclusion in the January 14, 1988 notice. It was decided that this substance should be removed from the Inventory since its inclusion in the January 14, 1988 notice was the result of a valid request for Inventory correction from the original submitter, and there was no evidence to show that this chemical substance has been manufactured or imported into the United States since January 1, 1975.

The Agency also concluded that the remaining 44 chemical substances have not been manufactured, imported, or processed for TSCA commercial purposes since January 1, 1975, and thus were not and are not eligible for the Inventory. Effective with the publication of this document, the 45 chemical substances are removed from the Inventory—the presence of their names in any previously published version of the Inventory notwithstanding. PMN requirements of section 5(a) of TSCA would apply to future manufacture or import of any of these 45 chemical substances. The chemical substances that are removed from the Inventory are listed below in ascending CAS Registry Number sequence. Each of the 45 chemical substances is further identified by its corresponding CAS Index Name:

Chemical Substances Removed From the TSCA Inventory

136-83-4	Phenol, 2-nonyl-.
5462-71-5	Benzeneacetic acid, 4-cyano-.
17736-40-2	1,3-Benzenediol, compd. with 1,3,5,7-tetraazatricyclo[3.3.1.1^{3,7}] decane.
18342-69-3	2,4,11,13-Tetraazatetradecane diimidamide, *N,N'*-dihexyl-3,12-diimino-, dihydrochloride.
22573-93-9	2,4,11,13-Tetraazatetradecane diimidamine, *N,N'*-bis(2-ethylhexyl)-3,12-diimino.
24925-59-5	Benzenamine, 4-nonyl-*N*-(4-nonylphenyl)-.
24969-07-1	Oxirane, ethyl-, homopolymer.

31440–49–0..... 2-Butenedioic acid (*E*)-, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.

35428–64–9..... 2–Propenoic acid, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.

36089–06–2..... Butanedioic acid, methylene-, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.

36089–48–2..... 2-Propenoic acid, 2-methyl-, polymer with *N*-(butoxymethyl)-2-propenamide, butyl 2-propenoate, ethenylbenzene and methyl 2-methyl-2-propenoate.

38974–68–4..... L-Glutamic acid, *N*-(4-iodobenzoyl)-.

40195–82–2..... 1-Propene,3,3,3-trifluoro-2-(trifluoromethyl)-, polymer with ethene.

51233–77–3..... Propanoic acid, 3-methylphenyl ester

51728–14–4..... Phenol, 2-[bis(4-hydroxyphenyl) methyl]-.

55157–26–1..... 1,3-Isobenzofurandione,5,5'-carbonylbis-, polymer with 3-ethynyl benzenamine and 3,3'-[1,3-phenylene bis(oxy)]bis[benzenamine].

55782–90–6..... Benzenamine, 4–isononyl-*N*-(4-isononylphenyl)-

57444–70–9..... L-Glutamic acid, *N*-(4-chlorobenzoyl)-.

63833–88–5..... 2(3*H*)-Furanone, dihydro-, polymer with *N*-(2-aminoethyl)-*N'*-[2-[(2-aminoethyl)amino]ethyl]-1,2-ethane diamine and *N*-(2-aminoethyl)-1,2-ethanediamine.

66794–58–9..... Sorbitan, monoisooctadecanoate, poly(oxy-1,2-ethanediyl) derivs.

67785–90–4..... Butanedioic acid, methylene-, polymer with 1,3-butadiene and 1,1–dichloroethene.

67786–03–2..... Oxirane,2,2'-[[[2-(oxyranylmethoxy) phenyl]methylene]bis(4,1–phenylene oxymethylene)]bis-.

67859–91–0..... 1,3-Benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2,2,4-trimethyl-1,3-pentanediol.

67893–13–4..... Poly(oxy-1,2-ethanediyl),.alpha.-[[(cyclohexylamino)methyl]-4-isononylphenyl]-.omega.-hydroxy-.

67905–97–9..... 2–Propenamide, polymer with *N,N*-di-2-propenylcyclohexanamine.

67969–72–6..... Oxirane,2,2'-[[[2-(oxiranylmethoxy) phenyl]methylene]bis(4,1-phenylene oxymethylene)]bis-, polymer with 1,3-diisocyanatomethylbenzene.

68003–36–1..... Benzenesulfonamide, 2-amino-*N*-ethyl-5-methyl-*N*-phenyl-.

68071–12–5..... Nonanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, benzoate.

68214–14–2..... 1,3-Benzenedicarboxylic acid, bis (2-hydroxyethyl) ester, polymer with tetrahydro-2,5-dioxo-3-furansulfonic acid.

68298–56–6..... Hexanedioic acid, polymer with 2-ethylhexyl 2-propenoate, 2,5-furandione and 1,2-propanediol.

68389–96–8*..... Soybean oil, polymer with allyl alc., glycerol, isophthalic acid, Me methacrylate, styrene and terephthalic acid.

68458–46–8*..... Paraffin waxes and Hydrocarbon waxes, polymers with melamine and methylolated octadecylurea.

68515–66–2*..... Cellulose, 2-hydroxypropyl ether, reaction products with ethylenimine.

70210–02–5..... 2-Naphthalenesulfonic acid, 7-amino-5-[[4-[(2-bromo-1-oxo-2-propenyl) amino]-2-[(4-methyl-3-sulfophenyl) sulfonyl]phenyl]azo]-, disodium salt.

70644–50–7..... 2-Propen-1-aminium, *N,N*-dimethyl-*N*-2-propenyl-, chloride, polymer with methyl 2-methyl-2-propenoate and 2-propenamide.

70644–52–9..... Methanaminium, *N,N,N*-trimethyl-1-[(1-oxo-2-propenyl)amino]-, chloride, polymer with ethenyl benzene and 2-propenamide.

70644–54–1..... Methanaminium,*N,N,N*-trimethyl-1-[(1-oxo-2-propenyl)amino]-, bromide, polymer with ethenylbenzene and 2-propenamide.

70644–55–2..... 2-Propen-1-aminium,*N,N*-dimethyl-*N*-2-propenyl-, chloride, polymer with ethenylbenzene and 2-propenamide.

72845–92–2..... Formaldehyde, polymer with 3-methylphenol and nonylphenol.

72854–40–1..... Cuprate(3-), [3-hydroxy-4-[[2-hydroxy-5-[[2-(sulfooxy)ethyl] sulfonyl]phenyl]azo]-2,7-naphthalene disulfonato(5-)]-, trisodium.

73297–36–6..... Cuprate(1-),[4-[[dihydroxy[(2-hydroxy-3,5-dinitrophenyl)azo]phenyl]azo] benzenesulfonato (3-)]-, hydrogen.

73309–48–5..... 8,16-Pyranthrenedione,2,10-dichloro.

73758–66–4..... 2-Butenedioic acid (*E*)-, polymer with 1,3-butadiene, 1,1-dichloro ethene and 2-propenoic acid.

76822–91–8*..... Butanamide,2,2'-[(3,3'-dicholoro [1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[3-oxo-*N,N'-bis(o*-anisyl and phenyl) derivs.

83137–17–1..... 3-Piperidinemethanesulfonic acid, 5-[[5-[[4-chloro-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-1-ethyl-2-hydroxy-4-methyl-6-oxo-, trisodium salt.

*CAS Registry Numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have nonspecific registrations and lack accepted molecular formula representations.

Accordingly, the 45 chemical substances listed above are deleted from the TSCA Inventory as of November 4, 1988.

Dated: September 1, 1988.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 88–22487 Filed 11–3–88; 8:45 am]

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Friday
November 4, 1988

Part V

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 301 et al.

Implementation of Improved Processing Inspection; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 302, 303, 305, 306, 307, 308, 312, 314, 316, 317, 318, 320, 322, 325, 327, 331, 335, and 381

[Docket No. 87-020P]

Implementation of Improved Processing Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend various provisions of the Federal meat inspection regulations and the poultry products inspection regulations to accommodate improvements planned for its system of inspection as applied to establishments that prepare meat food products and/or process poultry products beyond slaughter and evisceration. The changes proposed in the Federal inspection system rely in part on 1986 amendments to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.) and is authorized by the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.). The 1986 amendments permit the exercise of greater discretion by the Secretary of Agriculture, through the Administrator of FSIS, in utilizing inspection program resources to perform inspection in each establishment more closely related to the health and economic risks that establishment presents to the food supply, (21 U.S.C. 455(b) and 606(a)), including the discretion to provide less than daily inspection coverage. Therefore, the Federal meat and poultry products inspection regulations must be amended to reflect a system of inspection in which the frequency and manner of inspection may vary among inspected establishments. These changes include modifications to various rules governing agency organization, procedure and practice, the revision of terminology in existing regulations incompatible with those changes, and the addition of rules describing the essential criteria to be used by FSIS in determining the conditions and methods of inspection coverage in establishments preparing meat food products and/or further processing poultry products. The responsibility of regulated industry members to prepare or process meat food products or poultry products only in compliance with the requirements of the FMIA or PPIA and the prohibitions against transactions in adulterated or misbranded products or products required to be inspected unless they have been inspected and passed (21 U.S.C. 458(a) and 610) is unchanged. The standards for determining whether a meat food product or poultry product is adulterated or misbranded (21 U.S.C. 453 (g) and (h) and 601 (m) and (n)) also are unchanged.

DATE: Comments must be received on or before February 2, 1989.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments to: Judith A. Segal, Director, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6525. (See also "Comments" under **"SUPPLEMENTARY INFORMATION."**)

FOR FURTHER INFORMATION CONTACT: Dr. Judith A. Segal, (202) 447-6525.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Effect on Small Entities

The Administrator, FSIS, has determined that this proposed rule is not a major rule under Executive Order 12291. It is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Administrator also has made a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, in accordance with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*).

The primary basis for these determinations is the fact that, as indicated above, instituting improved processing inspection in conjunction with the 1986 discretionary inspection amendments fundamentally involves modifications in the utilization of inspection program resources and not changes in the basic responsibilities of regulated industry members. Therefore, FSIS does not expect any costs or other effects of the proposed rule to be major or to have significant adverse impacts on the regulated industries, including small businesses, or others. The types of action provided for by the proposed rule constitute implementation of Congress' direction to the Department to more effectively utilize its resources in inspecting operations subject to an improved processing inspection (IPI) system so that, among other things, it is in a better position to respond to budgetary constraints and industry growth and development.

The Agency believes that no major costs to the regulated industry will be generated by the proposed regulations. In terms of the general costs of doing business, it is true that IPI reflects the proposition that the industry should no longer rely upon inspectors to spot potential problems and require correction of conditions that may lead to production of adulterated or misbranded product, and this means many establishments will have to take greater initiative in spotting and correcting potential problems in their plants to avoid producing noncomplying product. However, since the law already requires that the plant take full responsibility for producing product in compliance with the law and regulations, this result cannot fairly be deemed an increased burden on plants due to the proposed rule. In fact, one of the Agency's reasons for instituting a new type of processing inspection is to avoid having inspection resources used as a substitute for plant initiative. At the same time, the fact that the plant is able to proceed with many of its activities that formerly required the presence of an inspector increases its operational flexibility. FSIS believes that the new system will result in net benefits to the industry.

The Agency does recognize a responsbility for making clear to the industry how inspection will be conducted in plants under the new system. Under IPI, plant management will have greater practical knowledge of the way in which inspection will be performed in its plant than it has had under the traditional system of inspection. Over the past few years, FSIS has developed a catalogue of existing inspection procedures, the Inspection System Guide (ISG), which is to be systematically applied to generate the monitoring plans inspectors will use in individual plants. The ISG outlines the legal requirements set forth in the statutes and/or regulations and shows what inspection personnel look at in the plant to determine compliance with those requirements. Under IPI, the establishment will be provided with a copy of the ISG and, thus, will know in advance what inspection tasks apply to the process and procedures performed in its plant. All inspectors will be tasked under the same plan to inspect that establishment. One of the benefits of this more objective form of inspection is

that plants will have more explicit information on what is required to be in compliance and that those requirements will be more uniform and consistently administered across all plants.

In summary, FSIS believes that the more uniform and systematic aspects of the IPI system make it more cost-effective for industry operations as well as for Agency inspections. However, there are certain provisions of the proposed regulations which could generate new costs for the plant. These costs would be minor and are described below.

One proposed provision is that establishments could be charged overtime for inspection services where an inspector arrives at a plant to conduct inspection tasks, in reliance on the approved schedule and in the absence of notice of any changes to that schedule, only to find the tasks cannot be performed because the plant is not operating. However, such a charge is a cost that is easily avoided altogether, and other changes affecting overtime would provide immediate, substantial savings to most establishments. First, it will be easier to avoid unscheduled operations that are subject to overtime because the proposal would provide for inspection coverage without charge for all scheduled operations conducted between 6:00 a.m. to 6:00 p.m., Monday through Friday—up to 60 hours per week compared to the 40 hours per week provided for in the current regulations. Second, when unscheduled operations are unavoidable, many if not most establishments would still not incur overtime costs for inspection coverage provided. This is because inspectors would not necessarily have to be present during overtime operations, as is generally the case now. Instead, it is expected that the frequency of overtime charges for coverage incurred during unscheduled operations would be roughly proportional to the frequency of program employees' inspection visits during regularly scheduled operations.

Another, very minor cost could be that involved in new recordkeeping responsibilities. Certain activities that formerly required inspector presence, such a destruction of product found to be adulterated and use of certain labels, could now be done by the establishment without waiting for an inspector to be present, as long as adequate procedures are followed and/or records are maintained. Thus, establishments could destroy their adulterated product instead of holding it until an inspector could supervise its destruction, if records are kept that will permit monitoring of that activity. Similarly, labels now approved by the inspector-in-charge could be used without prior approval—saving the expense and time involved in obtaining prior approval from FSIS Headquarters—as long as FSIS has available all the information it needs to monitor the establishment in that area. Such records are normally retained in the ordinary course of business and should not involve significant new costs.

Some additional costs could also be attributed to a proposed change in the requirements regarding transportation between establishments of inspected and passed product for further processing. Currently, the conveyance by which such product is transported—e.g., railroad car, truck or other conveyance—must be sealed with an official seal, which must be applied and removed by an inspection program employee. The proposal would do away with that seal requirement for most such products, but would substitute a requirement that the product be shipped in closed containers that are sealed (with unofficial seals) by the transporting establishment to provide the receiving establishment assurance that the shipment has maintained its integrity during transportation. The costs of the new requirement for unofficial seals and closed containers should not be substantial, and would be offset by savings to affected establishments by not having to rely on and wait for Inspection Program employees to seal and open such shipments.

In developing the regulatory changes needed for full implementation of its IPI system, including the Agency's discretionary authority to provide less than daily processing inspection coverage, FSIS has considered the potential impact on all affected businesses, including small entities, as well as on the Federal government and consumers and has sought to minimize any potential negative effects. However, FSIS is interested in getting comments concerning the possibility of negative impacts that might result from this proposed regulation and the improvements planned for processing inspection procedures as outlined hereinafter.

Comments

Interested persons are invited to submit comments concerning this proposal. Such comments should be sent to the FSIS Hearing Clerk. They should refer to the docket number located in the heading of this document. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such a request to Dr. Segal so that arrangements may be made for such views to be presented. A transcript will be made of all views presented orally. All written and oral submissions made pursuant to this notice will be made available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Policy Office, Room 3171, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC.

Background

The Secretary of Agriculture's duties include implementation of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to prevent the preparation or processing and distribution of meat, meat food products, and poultry products which are adulterated or misbranded or not properly marked, labeled, and packaged (21 U.S.C. 453 (g) and (h), 457, 458, 601 (m) and (n), 607, and 610). Responsibility for exercising the functions of the Secretary contained in the FMIA and PPIA has been delegated to the Administrator, FSIS (7 CFR 2.17(g) and 2.55(a)(2)). Among those functions are administration of the inspection requirements for meat food and poultry products and sanitation practices in establishments preparing or processing such products for distribution in commerce or otherwise subject to inspection under the FMIA or PPIA (21 U.S.C. 455, 456, 605, 606, and 608) and the issuance of rules and regulations executing provisions of these Acts (21 U.S.C. 463(b) and 621).

In November 1986, the Congress of the United States amended the inspection requirements for meat food products in section 6 of the FMIA (21 U.S.C. 606), pursuant to the Processed Products Inspection Improvement Act of 1986, Title IV of the Futures Trading Act of 1986 (FTA) (Pub. L. 99-641). Rather than requiring the Secretary to cause inspectors appointed for that purpose to make an examination and inspection of all meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, such examination and inspection is to be:

> * * * conducted with such frequency and in such manner as the Secretary considers necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary considers to be appropriate * * * [FTA, section 403(a)].

Three such factors are specified in the statute: The nature and frequency of processing operations at an

establishment, the adequacy and reliability of the processing controls and sanitary procedures at an establishment, and the history of compliance with inspection requirements in effect under the FMIA by the operator of an establishment or anyone responsibly connected with the business (i.e., any partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or employee in a managerial or executive capacity) that operates that establishment.

By so amending the FMIA, Congress directed the Department, for a 6-year period, [1] to vary the frequency with which and the manner in which meat food products are examined and inspected based on considerations which are relevant to the effective regulation of meat food products and the protection of the public health and welfare. Among other things, inspection coverage at establishments preparing such products for distribution in commerce no longer must be provided on a daily basis.

The legislation also reflects Congressional recognition that full implementation of a new system of government inspection of post-slaughter processing operations will take time. Title IV and the amendments made thereby became effective on the date of enactment (November 10, 1986), except that sections 6, 9, and 21 of the FMIA (21 U.S.C. 606, 609, and 621), as in effect immediately before that date, "apply with respect to establishments until the Secretary . . . first issues rules and regulations to implement the amendments made by section 403(a)" (FTA, section 408). To assure an orderly transition to improved processing inspection and to encompass the provisions mandated by the 1986 amendments, FSIS's first implementation action was the publication, on March 30, 1987, of an interim final rule with request for comments (52 FR 10028) that, as indicated below, initiated a period of experimentation.[2]

The Department supported the 1986 amendments to the FMIA because it believes that the efficiency and effectiveness with which the meat inspection program utilizes available resources will be improved by its being able to vary the frequency and the manner of inspection.

Although the Congressional action that generated the need for this rulemaking concerned only establishments regulated under the FMIA, the March 1987 rulemaking included similar operations processing poultry products. Under the PPIA, the Department has had the authority to vary the frequency and the manner of government inspection in establishments conducting post-slaughter and evisceration processing of poultry products. In particular, section 6(b) (21 U.S.C. 455(b)) requires the Secretary to cause government inspectors to make:

> * * * post mortem inspection of the carcass of each bird processed, and at any time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as human food in each official establishment processing such poultry or poultry products for commerce or otherwise subject to inspection * * *

To date, however, the rules and regulations and other aspects of inspection coverage under the PPIA have been basically comparable to those prescribed pursuant to the narrower pre-amendment authority in the FMIA.

The Administrator of FSIS believes that the frequency and the manner of reinspection by program employees of further processed poultry products should be based on the same factors as those considered appropriate under the amended FMIA.

Improved processing inspection will fundamentally change how FSIS conducts its inspection-related operations. For this reason, the Administrator has concluded that the actual shift from the current inspection system to IPI must be accomplished carefully and deliberately, over a period of time, to minimize unnecessary disruption of ongoing inspection coverage requirements and to maintain a high level of public health protection throughout the transition. Therefore, before undertaking such fundamental changes to the meat and poultry inspection system, the Administrator has required that pilot programs be set in place and information gathered on the various facets of these changes and their potential effects on the Federal inspection system, the regulated industry, and consumers. Initial pilots tested various aspects of IPI starting with procedures for determining whether and, if so, to what extent the intensity of Federal inspection coverage at some processing establishments exceeds that which is necessary and for determining appropriate coverage of operations in such establishments.

Therefore, the first rules and regulations issued to implement the amendments made by section 403(a) of the FTA to section 6 of the FMIA (21 U.S.C. 606) and to institute a comparable IPI system under the PPIA consisted of provisions for conducting pilot tests in establishments subject to Federal inspection (9 CFR 303.2 and 381.3(c)–(e)).

Although pilot testing under those provisions continues, the Administrator has determined that FSIS now has sufficient information to propose regulations that will permit implementation of its improved processing inspection. The proposed rule would, upon being made final, rescind the provisions previously issued to initiate experimentation with IPI procedures (proposed removal of 9 CFR 303.2 and 381.3(c)–(e)).[3]

Overview of the Regulatory Framework for Improved Processing Inspection

FSIS intends that all of its meat and poultry regulatory activities relating to the processing of meat food and poultry products in official establishments will be carried on under IPI, which will encompass and implement the provisions of the 1986 amendment and will replace the present system of inspection for all processing operations.

Under the present system of inspection, most establishments receive the same relative intensity of inspection regardless of the risk they present to the public. In the FTA, Congress directed the Department to implement a system of inspection under which inspection resources would be allocated to establishments on the basis of the public health and economic adulteration risk

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[1] Not later than 6 years after the date of enactment, Congress is to evaluate the operation and effects of the amendments made by section 403 of the FTA for the purpose of determining whether to extend or modify the operation of such amendments and enact such legislation as may be necessary to efficiently and effectively carry out the FMIA (FTA, section 407).

[2] On December 18, 1987, FSIS published a final rule, with a minor change in wording for clarification (52 FR 48084). The Federal meat inspection regulations also were amended to provide for the waiver for limited periods of provisions of those regulations in order to permit (1) appropriate and necessary action in the event of a public health emergency or (2) experimentation so that new procedures, equipment, and/or processing techniques may be tested to facilitate definite improvements, where such waivers do not conflict with either the purposes or the provisions of the FMIA (9 CFR 303.1(g)). The poultry products inspection regulations already included such a rule (9 CFR 381.3(b)), but it provided for only those emergency situations that are "national" in scope. Since such waivers also may better enable FSIS to take appropriate and necessary action in response to an emergency in a smaller geographic area and the focus of concern here is assuring adequate public health protection, the words "public health" were substituted for "national."

[3] Further information on the results of pilot testing to date under those provisions is available for public inspection and copying in the Policy Office (see "ADDRESSES"); additional information will be available after that pilot testing is completed.

presented by those establishments. Under IPI, then, the frequency and/or manner of performing Federal inspection, i.e., the intensity of inspection, will be more closely related to the risk presented by a particular establishment than it is under the current system of inspection.

Although this rulemaking anticipates that changes eventually will be made in both the manner and frequency of inspection, it is concerned primarily with regulation changes that would permit FSIS to vary the *frequency* of inspection visits (and of the in-plant inspection-related tasks performed on such visits) based on the risks posed by the establishment and its products. FSIS is not planning at this time to change the manner in which inspection is performed (that is, the nature of the in-plant inspection-related tasks performed by FSIS personnel).

Under IPI, the plan of inspection developed for each establishment would use only existing inspection methods. Existing inspection methods associated with various processing operations have already been identified as part of the Agency's program to prepare an Inspection System Work Plan (ISWP) for all establishments not operating under an approved total quality control program. These inspection methods have been further defined and catalogued in a recent FSIS publication, the Inspection System Guide (ISG).[4] The ISG is a management tool that provides a uniform structure for the assignment and conduct of all inspections and reviews of establishments. The guide summarizes existing inspection requirements, and lists the specific inspection tasks and activities by which inspection program personnel will monitor or review establishment compliance with such requirements. The ISG identifies specific inspection-related tasks relating to the critical control points (CCPs) that apply to processing operations generally. The ISG also lists the current standards by which each CCP is measured. Therefore, application of ISG-listed inspection methods would not in and of itself require any change in establishment procedures. This includes establishment procedures conducted in conformance with an FSIS-approved total or partial quality control plan. The inspection plan for establishments operating under such a quality control plan will be tailored to conform to the TQC or PQC plan in effect.

[4] The ISG is available for review at the office of the FSIS Hearing Clerk, 3171-South Bldg., Washington, DC, between 9:00 a.m. and 4:00 p.m. daily.

Any changes in the manner of performing in-plant inspection tasks that the Department might want to institute in the future, and that would impose any rights or obligations on establishments and/or preclude the exercise of discretion by on-site FSIS personnel, will be the subject of notice and comment rulemaking at that time.

The ISG and a deficiency classification guide will be used to verify controls and document compliance for all processing operations under IPI. An ADP system will collect the results of inspection visits and establish a cumulative record of establishment performance based on an evaluation of its operational control procedures. The frequency at which various inspection tasks are performed at each establishment will be adjusted as needed, based primarily on performance as reflected through ADP-generated inspection plans. However, other factors, such as plant initiated production changes or new scientific or technical information, also may influence the frequency of in-plant inspection tasks.

In addition to the ISG and the deficiency classification guide to be developed, the Agency plans to publish other guidelines that will be used in managing inspection under IPI and to facilitate the application of the regulatory criteria being proposed in this rulemaking. All such guidelines will be available to the public before the inspection activities with which they are concerned are instituted.

Criteria Proposed for Risk Evaluation and Determination of Inspection Intensity

Integral to the Agency's IPI procedures are those regulatory and organizational changes that will permit processing operations to be inspected at different frequencies and intensities.

The core of the regulatory framework is a set of criteria that can be used to (1) evaluate the risk presented by each establishment, and (2) determine the appropriate intensity of inspection for each establishment. The Agency is therefore proposing in this rulemaking criteria that can be used to make these determinations (§§ 302.4; 302.5; 381.4; 381.8). The proposed criteria for evaluating risk and determining intensity will be applied in three procedures as follows:

Procedure 1: Documentation of Compliance History and Establishment Characteristics

The pilot test for improving the Agency's processing inspection utilized a screening document completed by inspectors and their supervisors to collect information on an establishment's objective characteristics, compliance history and effectiveness in controlling its operations. The pilot has demonstrated that this screening process is useful for collecting information on an establishment's objective characteristics, such as size and complexity of its production process, and on its compliance history, but that it is not reliable for making determinations about an establishment's ability to control its operations and sanitation. Therefore, the Agency is proposing to limit use of the screen to document establishment characteristics and compliance history, which will be considerations in determining the appropriate intensity of inspection. This screen would be updated periodically. The screening document and the guidelines used to make determinations based on the information collected in this document will be available to the public before they are put in use.

This screening process will utilize criteria representing two of the three factors included in section 6(a)(2) of the amended FMIA (21 U.S.C. 606(a)(2); section 403(a) of the FTA); history of compliance with inspection requirements (proposed 9 CFR 302.5(b)(1)(i) and 381.8(b)(1)(i)); and nature and frequency of processing operations (proposed 9 CFR 302.5(b)(2) and 381.8(b)(2)).

Procedure 2: Evaluation of Competence to Control Operations

The second procedure is an evaluation, conducted through routine daily inspection visits, of the establishment's ability to control its production, environment and product to meet regulatory requirements. The criteria used to make this evaluation represent the third factor included by Congress in the FTA: adequacy and reliability of processing controls and sanitary procedures (proposed 9 CFR 302.5(b)(1)(ii) and 381.8(b)(1)(i)).

The Agency believes that an examination of the operations at CCPs in each establishment is the best indicator of the adequacy and reliability of that establishment's processing controls and sanitary procedures. For each CCP and the inspection tasks associated with it, the Agency will establish a standard frequency of inspection. This standard frequency will approximate the frequency at which the same CCP inspection tasks are performed under current daily inspection, but will also reflect the Agency's judgment of (1) the public

health and/or economic adulteration risks associated with CCP failure, and (2) standard performance levels (SPLs) representing the maximum deficiencies an establishment can have if it is to avoid intensification of inspection of that CCP.

When improved processing inspection is initially implemented, all establishments will be under at least daily inspection and all CCPs will be covered by standard frequencies. Changes in inspection visit schedules for a plant and frequencies for inspecting CCPs in the plant will be based on the results of successive checks of the plant's controls during routine inspection visits. CCPs with similar characteristics may be grouped and moved together to lower or higher intensities. Successive checks of a CCP over an established period of time resulting in a performance record that does not fall below the SPL will result in such checks being less frequent. Successive checks over an established period that result in a performance record that falls below the SPL will result in such checks being more frequent. Minimum and maximum frequencies will be established for all CCPs. No establishment will be on an inspection schedule which does not permit the appropriate frequency to be performed. If intensification of inspection is called for but the maximum frequency is already being performed, the number of inspection tasks performed for the subject CCP may be increased.

In summary, FSIS intends to assign inspection program personnel work to be performed during inspection visits on the basis of the risks inherent in the process and the cumulative performance of the plant in controlling the process.

Procedure 3: Determining Intensity of Inspection for Each Establishment

Determinations of what inspection intensity is appropriate for an establishment will reflect cumulative performance data generated by all inspection visits. The information generated by ADP-scheduled inspection visits reflects an establishment's routine control over its operations and therefore normally will be the most significant element in determining the frequency of future inspection visits. However, inspection program personnel may visit a plant for other reasons as well, and these visits also may produce data affecting the intensity of inspection. The Agency may deploy resources to conduct other inspection-related activities, for example, to spot-check operations and supplement information generated in the ADP system, to deal with establishment deficiencies or noncompliance, and to provide services such as export certification or breaking of official seals.

In addition to performance data generated by inspection visits, other elements will influence the intensity of inspection: compliance history; establishment characteristics such as size, volume of production and other characteristics that affect the difficulty of inspecting the establishment; the significance of potential public health consequences of noncompliance; management competence; and the availability of inspection program employees.

As a result of the pilot, the Agency found that it could not collect reliable information on "management competence" *in vacuo*. Although objective, mechanically applied criteria must be supplemented by an element of subjectivity and reliance on the professional judgment of inspection program personnel, the "management competence" criterion was too difficult to define much less apply reasonably and equitably in evaluating the risk presented by official establishments. Therefore, FSIS will consider management competence to be indicated by the establishment's compliance history and its ability to control its production process, environment and product. In evaluating establishment risk, the Agency will make no judgments on "management competence" outside of the context of the establishment's past and current performance in meeting regulatory requirements.

Changes Proposed in Requirements to Accommodate Improved Processing Inspections

In some cases regulatory requirements must be changed to permit production activities to continue when an inspector is not present to perform a task which under current regulations requires the presence of an inspector. The changes in these proposed requirements are restricted to what is necessary to compensate for the reduction in inspector presence in a way which maintains public protection and does not unduly inhibit industry productivity. The number of these kinds of changes being proposed is small. It is FSIS's intent to propose in this rulemaking only those changes necessary to implement the IPI, most notably those changes required to implement "discretionary inspection" authority under the FTA.

The regulations will continue to require that certain in-plant inspection related activities be conducted only by a program employee, regardless of whether an establishment has been determined to be one not requiring daily inspection. For example, only an inspection program employee may remove a "U.S. Rejected" tag applied to insanitary equipment or rooms under § 308.15 or a "U.S. Retained" tag applied to products suspected to be adulterated or misbranded under § 318.2, and only an inspection program employee may complete an export certificate as provided for under Part 322. Furthermore, other in-plant activities *may* require that an inspection program employee be at the establishment and therefore will require some form of notification be given to FSIS. For example, establishments have to notify FSIS if they wish to conduct operations outside their approved schedules of operations so that Federal inspection coverage can be provided as needed under §§ 307.4(d)(3) and 381.37(d)(3). In addition, establishments would have to notify FSIS of schedule deviations that involve cancelling of scheduled operations to avoid possible overtime costs that may be incurred in providing inspection coverage during the scheduled hours of operation.

Establishments frequently need to communicate with program employees for a variety of reasons. However, as a result of the discretionary inspection element of IPI, establishments will not be able to predict when or if a Federal inspector will visit the plant on a given day. Therefore, FSIS directives will address inspection program employees' responsibilities with regard to establishing and maintaining communications with establishment personnel and guidance will be given to individual establishments regarding whom they should contact and when. In any event, FSIS, in implementing IPI, will make every effort to minimize any burden or inconvenience, including that involved in initiating communication with program employees in various situations.

Proposed Restatement of Requirements

The reduction of Federal inspector presence in plants makes it necessary to re-state some current regulatory requirements that are not expressed in term of, or otherwise associated with, the continual presence of such an inspector. This rulemaking is proposing editorial changes in these regulations to clarify that these requirements, although expressed in terms associated with the daily presence of such an inspector, have not been changed even where inspector presence has been reduced, and, further, to clarify that the

responsibility for compliance with these regulations rests on the establishment.

Proposed Conforming and Terminology Changes

Other changes in the regulations have been proposed to broaden organizational terms, e.g., changing "inspector" to "inspection program personnel," to accommodate any changes in the organization of Agency resources that may be needed to support a system of inspection where Federal inspector presence is used less to achieve regulatory compliance. Similarly, the phrase "supervised by Program employees," although it has been subject to interpretation, connotes to most that some physical presence by a program employee is required as an indicia of "supervision." This concept is at odds with IPI where the conditions and methods of inspection coverage will vary and may include "less than daily coverage" where the program has determined that a program employee need not always be present in circumstances where previously "supervision" was required. In such cases, the requirement is more aptly put as conducted under appropriate inspection coverage. (See proposed subparagraph (1) of 9 CFR 307.4(b) and 381.37(b).) These changes conform existing regulations to proposed changes, eliminate obsolete language, and perform similar non-substantive functions.

Program Changes Not Part of This Rulemaking

FSIS is planning to use some new resource configurations under IPI. This is likely to involve changes in staffing procedures, supervisory responsibilities, information processing, and similar changes which do not affect regulatory requirements. For example, the Agency is planning to modify its practice of assigning one employee to an establishment as an inspector-in-charge and plans, when appropriate, to assign inspection visits to one establishment on a random basis to different inspection employees. Also, the Agency plans to collect and store in an ADP system the results of inspection visits. When the exact nature of these changes has been determined through pilot testing, Agency procedures will be set forth, as they are under the current system, in Agency directives. Such directives will concern the procedures by which government allocates its resources.[5] Nonetheless, Agency directives that describe these changes and set forth any new Agency procedures will be available to the public before the inspection procedures with which they are concerned are instituted.

Description of Proposed Regulations

Risk Evaluation and Determination of Inspection Intensity

The Administrator believes that the factors used in assessing the performance of an establishment (9 CFR 303.2(b)(1) and 381.3(d)(1)) and its characteristics (9 CFR 303.2(b)(2) and 381.3(d)(2)) during the period of experimentation should be applied by the meat and poultry inspection program in making determinations as to the appropriate intensity of government inspection of meat food products and/or poultry products processed beyond slaughter and evisceration in all establishments preparing or processing such products. For purposes of both meat food product and poultry product inspection, the criteria specified would take into account the factors included in section 6(a)(2) of the amended FMIA (21 U.S.C. 606(a)(2); section 403(a) of the FTA): (1) Nature and frequency of processing operations (proposed 9 CFR 302.5(b)(2) and 381.8(b)(2)); (2) the adequacy and reliability of processing controls and sanitary procedures (proposed 9 CFR 302.5(b)(1)(ii) and 381.8(b)(1)(ii); and (3) the history of compliance with inspection requirements (proposed 9 CFR 302.5(b)(1)(i) and 381.8(b)(1)(i)).

Proposed §§ 302.5 and 381.8 of the Federal meat and the poultry products inspection regulations (proposed 9 CFR 302.5 and 381.8), respectively, provide generally that the inspection program shall base the frequency and the manner of government inspection of such products on considerations relevant to effective regulation of meat food products and poultry products and protection of the health and welfare of consumers. It is intended that determinations as to the frequency of inspection would be based upon the program's evaluations of the performance and the characteristics of individual establishments in which meat food products and/or poultry products are made from livestock previously slaughtered and/or poultry previously slaughtered and eviscerated in official establishments (proposed 9 CFR 302.5 (a) and (b) 381.8 (a) and (b)). For each such establishment, the inspection program would determine what conditions and methods of inspection coverage of operations are appropriate, based on: (1) Its evaluation of the characteristics of that establishment, (2) the procedures used in that establishment to control the production process, environment, and resulting product in order to assure and monitor compliance, (3) the significance of potential public health consequences of noncompliance, (4) the competence of the person conducting operations at that establishment, and (5) the availability of meat and poultry inspection program employees (proposed 9 CFR 302.5(c)(1)(i)–(v) and 381.8(c)(1)(i)–(v)).

In preparing for the initial experimentation period for improved processing inspection, FSIS drew upon its experience in allocating inspection program resources to provide Federal inspection at a wide variety of establishments, each to some degree unique and different from the others to develop tentative guidelines for use in making determinations about the conditions and methods of inspection coverage of operations in establishments included in pilot tests. Thus, for example, in assessing the complexity of processing operations (see proposed 9 CFR 302.5(b)(2)(i) and 381.8(b)(2)(i)), FSIS has been categorizing operations as involving product preparation or processing that is "simple", "medium", or "complex" by applying FSIS Directive 1030.2.[6] FSIS also has been utilizing a three category approach in assessing certain other establishment characteristics: the volume of resulting product (highest total product volume during any quarter within the preceding year as less than 60,000; 60,000 to 1,000,000; or more than 1,000,000 pounds), the size of the establishment (less than 12,000; 12,000 to 80,000; or more than 80,000 square feet), and the scope of any livestock slaughter or poultry slaughter and evisceration operations (none, part time, or full time) also being conducted (but to which IPI will not apply) at an establishment which prepares meat food and/or processes poultry products beyond slaughter and evisceration (i.e., a "combination" establishment) (see proposed 9 CFR 302.5(b)(2)(iii), (iv), and (vi) and 381.8(b)(2)(iii), (iv), and (vi). FSIS also has been considering the frequency with which operations are conducted and what, if any, food products not regulated under the FMIA or the PPIA also are prepared or processed there (see proposed 9 CFR

[5] Section 553 of the Administrative Procedure Act (APA) exempts from notice and comment rulemaking requirements "interpretative rules, general statements of policy, or rules of agency organization, practice or procedure * * *" (5 U.S.C. 553(b)).

[6] Documentation of Processing and Combination Assignments, 4/22/85, which is available for public inspection and copying in the Policy Office.

302.5(b)(2) (ii) and (v) and 381.8(b)(2)) (ii) and (v)).

As the Agency gains experience in operating under IPI and the nature and scope of processing operations conducted at inspected establishments continue to change, FSIS expects that these guidelines will undergo further refinement or other modification. FSIS plans to develop a directive that will include, among other things, guidelines for assessing the characteristics of establishments regulated under IPI procedures. FSIS now anticipates that initially the establishment characteristic guidelines will be essentially the same as those used during the experimentation period. FSIS will, however, consider relevant comments submitted in response to this proposal in developing that directive, which will be available to the public by the completion of this rulemaking.

Under fully implemented improved processing inspection, the conditions and methods of inspection coverage would be tailored to the public protection risk presented by a particular official establishment. The inspection program would consider including less than daily coverage by inspection program employees as part of the inspection being performed in a particular establishment if and only if its evaluation of an establishment's performance: (1) Reveals a good compliance history and (2) evidences control procedures adequate to assure and monitor compliance with applicable regulatory requirements under less than daily coverage.

The first performance criterion, compliance history (proposed 9 CFR 302.5(b)(1)(i) and 381.8(b)(1)(i)), would include assessment of both the nature and frequency of noncompliance. It is anticipated that substantial and recent noncompliance would preclude any significant reduction in the frequency of inspection activities in an establishment. Noncompliance would be regarded as substantial when, for example, it involves the preparation of adulterated product that could pose a serious public health threat if distributed to consumers or recurring failures that could be considered indicative of a lack of regard for the public health or welfare; and, within the 10-year time limit on record documentation, the more substantial the violation, the longer it would be regarded as sufficiently recent for consideration.

The second performance evaluation criterion would be an assessment of the procedures used in the establishment to control the production process, environment, and resulting product in order to assure and monitor compliance with requirements of the FMIA or PPIA and rules and regulations thereunder (proposed 9 CFR 302.5(b)(1)(ii) and 381.8(b)(1)(ii)).

FSIS's objective in making this evaluation of risk is to determine whether there are adequate indications that the probability of future noncompliance is low. While the inspection program might modify the conditions and methods of inspection coverage at any establishment (pursuant to proposed 9 CFR 302.5(c)(1) and 381.8(c)(1)), operations requiring inspection would not be conducted under less than daily coverage unless the two performance evaluation criteria are met (proposed 9 CFR 302.5(b)(1) and 381.8(b)(1)).

Clarifying and Terminology Changes

In addition to amending the regulations to include, in proposed §§ 302.5 and 381.8 (proposed 9 CFR 302.5 and 381.8), the factors and criteria to be applied in evaluating the risk and determining the appropriate intensity of government inspection for each establishment, other portions of the regulations must be amended before IPI can be fully implemented.[7] In particular, the Federal meat inspection regulations (9 CFR Chapter III, Subchapter A) and the poultry products inspection regulations (9 CFR Chapter III, Subchapter C) must be amended to accommodate an organizational structure that is appropriate for FSIS management of improved processing inspection which provides for less than daily inspection and to include additional guidance on what is required for compliance with requirements of the FMIA and/or the PPIA and the rules and regulations thereunder. The remainder of this preamble presents the further amendments to the Federal meat inspection regulations (9 CFR Parts 301–303, 305–308, 312, 314, 316–318, 320, 322, 325, 327, 331, and 335) and the poultry products inspection regulations (9 CFR Part 381, Subparts A, B, E–H, M–O, Q, T, V, and X), organized by corresponding parts and subparts of those regulations, that FSIS is proposing in connection with its implementation of IPI in establishments that prepare meat food products and/or process poultry products beyond slaughter and evisceration.

[7] Proposed modifications to the Federal meat inspection regulations would implement amendments to sections 6, 9, and 21 of the FMIA (21 U.S.C. 606, 609, and 621; see sections 403 (a) and (d) of the FTA).

Definitions: Part 301 and Part 381, Subpart A

FSIS is proposing to modify provisions of §§ 301.2 and 381.1(b) of the Federal meat and the poultry products inspection regulations (9 CFR 301.2 and 381.1(b)), respectively, to assure that they include a consistent and accurate set of terms which adequately account for modifications in the structuring of inspection program functions that are anticipated under IPI while continuing to be suitable for the system of ante- and post-mortem inspection, which is not being changed. The regulations now use a variety of terms in referring to the inspection program and personnel performing inspection program functions. The proposed rule would utilize terminology more uniformly and build on the "Inspection Program" as the basic program and personnel unit.

The amendments that would be made by this proposed rule generally use "Inspection Program employee", rather than "Program employee", "Inspection Service employee", "inspector", and "inspector in charge", or "Inspection Program supervisor", rather than "circuit supervisor", terminology when referring to personnel responsible for making various determinations or taking other actions either within or outside of official establishments. These proposed amendments reflect FSIS's expectation that the structure of its field organization will change over time. In particular, for some types of inspection coverage, FSIS intends to move away from the current practice of assigning particular in-plant inspection program personnel to a particular official establishment preparing meat food products or further processing poultry products. Instead, the Agency will begin organizing inspection program employees into units that will perform inspection program functions in a number of official establishments under the supervision of designated inspection program personnel. The inspection program supervisors designated for particular establishments will be identified and such identifications will be kept current. (As indicated below, other inspection program employees also will be designated as having responsibility for certain functions.)

Proposed amendments would clarify that the "Inspection Program" is the organizational unit within the Department having responsibility for carrying out the relevant statutory provisions and the rules and regulations thereunder (proposed amendments to 9 CFR 301.2(f) and 381.1(b)(26)). Because FSIS is not proposing to amend all of the

regulations that currently include the terms "Program" and "Inspection Service" (i.e., provisions of the regulations that are not otherwise being amended to reflect the change to improved processing inspection), these terms would be retained in the Federal meat and poultry products inspection regulation definitions (9 CFR 301.2(f) and 381.1(b)(26)), respectively. The regulations would be amended to provide for use of "Inspection Program employee" to describe "any inspector or other individual employed by the Department or any cooperating agency" who is authorized "to perform any function in connection with the Inspection Program" (proposed amendments to 9 CFR 301.2(h) and 381.1(b)(27)(i)), but the terms "Program employee" and "Inspection Service employee" would not be deleted from these provisions.

Meat and poultry inspection program employees include inspectors in charge. The proposed rule would amend the existing definitions to clarify the role of an "inspector in charge" (IIC) as a distinctive type of "Inspection Program employee" (proposed amendments to 9 CFR 301.2(nnn) and 381.1(b)(28)(ii)): one who is "designated as having primary responsibility for Inspection Program functions at a particular official establishment." Among other things, this would delete the description of IIC's as being "in charge of" establishments subject to inspection under the FMIA. FSIS views that phrase as particularly inappropriate with the implementation of a system of inspection which emphasizes the responsibility of industry members to operate in compliance with regulatory requirements.

The proposed rule also would add a definition of "Inspection Program supervisor" to the Federal meat inspection regulations (proposed amendment to 9 CFR 301.2(k)) and would modify the definition of "Inspection Service supervisor" in the poultry products inspection regulations (proposed amendment to 9 CFR 381.1(b)(27)(ii)) to include any "Inspection Program employee who is delegated authority to exercise supervision over one or more phases of the Inspection Program at a designated level," with information identifying such employees available from the Administrator. Inspection program supervisors include, among others, circuit supervisors. The proposed rule would modify the current definitions of "circuit supervisor" by including a functional description of the area of responsibility in the Federal meat inspection regulations (proposed amendment to 9 CFR 301.2(j)), rather than a reference to the "Circuit" definition (see proposed amendment to 9 CFR 301.2(k)) and by improving the description now in the poultry products inspection regulations and integrating it with other "Inspection Program" definitions (proposed amendment to 9 CFR 381.1(b)(51)(ii)): an Inspection Program employee "with responsibility for supervising the carrying out of Inspection Program functions at more than one official establishment." Similarly, the term "area" would be revised in the meat regulations (§ 301.2(mmm)) and would be added to the poultry regulations (§ 381.1(b)(63)) to define "area" as the organizational unit to which "circuit supervisors" and/or other inspection program supervisors report since this definition more clearly describes the inspection structure under improved processing inspection.

The definition of U.S. Retained" (proposed § 301.2(ff)) would be revised to state that disposition of U.S. Retained product requires "further evaluation by an inspection program employee * * *" instead of "further examination by an inspector." This clarifies that disposition of such product may rest upon a physical examination of the product, but also could rest upon an evaluation of factors and circumstances extraneous to the product (e.g., a finding that an insanitary condition did not affect certain lots of product). The change also reflects the change from a system where an inspector is assigned to a specific establishment and is always available for such functions to one where inspection program personnel are assigned a variety of inspection-related tasks at a number of establishments and may not be available at any one time to perform such functions in a given plant.

The only other amendments being proposed for the definitional portions of the regulations involve the scope of the application of improved processing inspection. The proposed amendment to the Federal meat inspection regulations would clarify that "further processing" can include types of manufacturing or processing other than the smoking, cooking, canning, curing, refining, or rendering of product previously "prepared" (including slaughtered (see 9 CFR 301.2(y))) and that such previous preparation may have taken place in one or more official establishments (proposed amendment to 9 CFR 301.2(eee)). The proposed amendment to the poultry products inspection regulations would include, in addition to the current definition of "process" (which includes the conduct of operations whereby poultry is slaughtered or eviscerated), a definition of "further processing" as referring to "* * * the conduct of any processing operation or combination of processing operations other than ones whereby poultry is slaughtered and/or eviscerated" (proposed amendments to 9 CFR 381.1(b)(43)). It is the frequency and manner of reinspection of further processed poultry products that will be varied under IPI.

Application of Inspection Requirements: Part 302 and Part 381, Subpart B

As discussed earlier, FSIS is proposing to amend these portions of the regulations by adding §§ 302.5 and 381.8 (proposed 9 CFR 302.5 and 381.8), which include provisions for determinating the risk presented by different establishments to accommodate changes in the conditions and methods of inspection coverage appropriate under IPI (i.e., for operations other than livestock slaughter and poultry slaughter and evisceration). The poultry products inspection regulations, in § 381.4 (9 CFR 381.4), also address generally the providing of inspection. FSIS is proposing in this section to state generally the principle concept behind IPI, that conditions and methods of inspection will differ among establishments, but that the Administrator will provide written guidelines to inspection program personnel to ensure uniform, efficient assignment and conduct of all appropriate inspection tasks and activities, and that such guidelines will be available to establishments and the public generally (proposed amendments to 9 CFR 381.4). FSIS believes that the Federal meat inspection regulations also should address generally the providing of inspection. Therefore, those provisions as they are currently in § 381.4 would be added to the meat inspection regulations at § 302.4 (proposed 9 CFR 302.4). (As indicated above, Subpart B of Part 381, as well as Part 303, of the regulations also would be amended by rescinding the provisions previously issued to initiate experimentation with improved processing inspection procedures (proposed removal of 9 CFR 303.2 and 381.3(c)-(e)).)

Inspection; Violations: Part 305 and Part 381, Subpart E

Since, under IPI, the inspection program is to consider the history of compliance with applicable regulatory requirements in assessing establishment performance and determining the frequency and the manner of

government inspection (proposed 9 CFR 302.5 (b)(1)(i) and (c)(2)(i) and 381.8 (b)(1)(i) and (c)(2)(i)). FSIS is proposing to amend §§ 305.6 and 381.28 of the Federal meat and the poultry products inspection regulations (9 CFR 305.6 and 381.28), respectively, to clarify and express consistently their scope. Under the proposed rule, the obligation to report violations would be stated as extending to "Inspection Program employees and other representatives of the Department," taking into account proposed amendments to the "Inspection Program" definitions discussed above (proposed amendments to 9 CFR 301.2 (f) and (h) and 381.1 (b)(26) and (27)(i)). In addition, the scope of misconduct covered by the regulations would be clarified as including all statutory violations and "noncompliance with the rules and" regulations under the FMIA of which such persons have "knowledge or" information (proposed amendment to 9 CFR 305.6) and noncompliance with rules as well as regulations under the PPIA of which they have knowledge "or information" (proposed amendment to 9 CFR 381.28). Also, to provide for greater flexibility in the management of program personnel and anticipated changes in its field structure, FSIS is proposing to amend §§ 305.4 and 381.27 of the regulations (9 CFR 305.4 and 381.27) by replacing references to "the circuit supervisor" and the IIC's "supervisor," respectively, with "an Inspection Program supervisor" as the personnel with responsibility for informing establishment operators of regulatory requirements.

Finally, FSIS is proposing to amend Part 305 of the Federal meat inspection regulations to reflect the current language of section 6(b)(2) of the FMIA (21 U.S.C. 606(b)(2)), which was amended by the FTA (section 403(a)) to provide that operators of official establishments, as well as any government inspectors there, are required to condemn all meat food products found to be adulterated and destroy such products for human food purposes. The proposed rule would amend § 305.5(a) of the regulations (9 CFR 305.5(a)) by including language on failure to condemn and destroy meat food products found to be adulterated among the situations in which the Administrator is authorized to withdraw inspection (also see proposed amendments to 9 CFR 335.11).

Program Personnel Authorities; Appeals: Part 306 and Part 381, Subpart F

In view of the anticipated changes in the structure of its field organization (as discussed above), FSIS is proposing to amend § 306.1 of the Federal meat inspection regulations (9 CFR 306.1) to provide for the designation of "Inspection Program supervisors for specific establishments" (rather than only circuit supervisors to whom assistants may be assigned) and to amend § 381.30 of the poultry products inspection regulations (9 CFR 381.30) to include a provision for the designation of Inspection Program supervisors by the Administrator. Similarly, to provide adequately for the range of personnel who may be performing inspection program functions in an establishment, § 306.2 of the Federal meat inspection regulations (9 CFR 306.2) would be amended to address access by "Inspection Program employees * * * to any official establishment in which they are authorized to perform Inspection Program functions" rather than one "to which they are assigned." (The poultry products inspection regulations (9 CFR 381.32) already provide for access by "[a]ny duly authorized representative of the Secretary.") Section 306.3 of the Federal meat inspection regulations (proposed amendment to 9 CFR 306.3) also would be amended to address admittance in terms of authorization to perform inspection program functions rather than assignment.

In addition, FSIS is proposing to amend §§ 306.5 and 381.35 of the Federal meat and the poultry products inspection regulations (9 CFR 306.5 and 381.35), respectively, to clarify that the provisions for appealing label reviews when an IIC is assigned to the establishment may not be applicable because, under IPI, processing establishments would no longer have their own assigned IIC. Under IPI inspectors-in-charge would no longer be required to approve certain labels before use under §§ 317.4(e) and 381.132(c) (see proposed revisions to those sections hereinafter).

Inspection Facilities; Conduct and Schedule of Operations: Part 307 and Part 381, Subpart G

In view of anticipated changes in the field structure, FSIS is proposing to amend §§ 307.1 and 307.2 of the Federal meat inspection regulations (9 CFR 307.1 and 307.2) by deleting the reference to inspector assignment (proposed amendment to 9 CFR 307.1) and by providing that inspection program supervisors in addition to circuit supervisors will be responsible for making decisions about the adequacy of office space and other facilities for "Inspection Program" use (proposed amendments to 9 CFR 307.1 and 307.2(d), (h), (j), and (k); see also proposed amendments to 9 CFR 381.36(a)). The conditions and methods of inspection coverage in establishments subject to IPI are expected to be taken into account in determining facility needs under § 307.1 of the Federal meat and § 381.36(a) of the poultry products inspection regulations (9 CFR 307.1 and 381.36(a)).

Sections 307.1 and 381.36(a) of the regulations (9 CFR 307.1 and 381.36(a)) also provide the Administrator with the discretion to relieve small plants "requiring the services of less than one full time inspector" of the need to furnish facilities for program employees where adequate facilities are available at a nearby convenient location. FSIS believes that the regulations should continue to provide for small plant relief at the Administrator's discretion, but that the quoted criterion is not appropriate for a system of inspection in which inspection coverage may not be by an inspector assigned to a particular establishment and the frequency and the manner of government inspection will be a function of various considerations (see proposed 9 CFR 302.5 and 381.8). Therefore, FSIS is proposing to delete this criterion from the provision (proposed amendments to 9 CFR 307.1 and 381.36(a)).

Sections 307.4, 307.5 and 307.6 of the Federal meat inspection regulations and their counterparts in the Federal poultry products inspection regulations (§§ 381.37, 381.38 and 381.39) deal with requests for inspection coverage during plant operations, with the relationship between inspectors' tours of duty and establishments' hours of operation, and with distinguishing routine inspection service provided without costs to establishments from non-routine coverage for which the program is to be reimbursed by the establishment. Establishments are required to schedule in advance their hours of operation and have those schedules approved by the program. This permits the program to allocate its resources as may be required to provide needed coverage, and to assure the establishment that the legally required inspection will be provided so that the establishment's operations may be conducted.

FSIS traditionally has attempted to accommodate all reasonable requests for inspection coverage, although in many instances this has resulted in the necessity to pay (and usually to seek reimbursement from establishments for) overtime services provided by inspection program personnel.

The scheduling of inspectors to accommodate establishments' hours of operations has been a comparatively simple task prior to the discretionary inspection provisions. Generally, the

inspectors assigned to an establishment have worked the same hours as the establishment. If that meant the inspector has to work more than 40 hours a week or on a Federal holiday, the inspector is paid overtime. Under §§ 307.5 and 307.6 (and §§ 381.38 and 381.39) the cost of such overtime is billed to the establishment. It should be noted, however, that large plants that routinely schedule and work two full shifts usually are assigned separate inspectors for the second shift, inspectors who incur no overtime and therefore generate no charges to the establishment for overtime reimbursement. This has resulted in an anomalous situation where smaller establishments and those less able to anticipate their hours of operation frequently have to reimburse FSIS for overtime incurred after 8 hours of operation, even though larger establishments operating even more hours (two full shifts—as much as 16 hours per day) get more inspection service at no additional cost.

Under improved processing inspection, of course, inspectors are not assigned just to certain establishments, and inspectors' tours of duty will no longer by synonymous with the hours of operation of the establishments where they conduct their inplant inspection activities. Therefore, FSIS is proposing to amend §§ 307.4 and 381.37 of the Federal meat and the poultry products inspection regulations (9 CFR 307.4 and 381.37, respectively) so that the schedule of operations requirements now in paragraphs (a), (b), and (c) of §§ 307.4 and 381.37 would be redesignated subparagraphs (a)(1), (a)(2) and (a)(3)—and made applicable only to livestock slaughter and poultry slaughter and evisceration operations (proposed 9 CFR 307.4(a) and 381.37(a), respectively).

Proposed §§ 307.4(b) and 381.37(b)—scheduling of operations for establishments *other* than slaughter/slaughter and evisceration—will roughly parallel proposed §§ 307.4(a) and 381.37(a). Each paragraph (a) and (b) will have a subparagraph (1) concerning the general requirement for inspection coverage during operations, a subparagraph (2) reciting the requirement to maintain regularly scheduled operating periods, and a subparagraph (3) stating that FSIS will provide such inspection coverage without charge for 5 consecutive 8-hour days within the administrative workweek Sunday through Saturday, excluding the lunch period. Each subparagraph (3) also will continue to state that the Department will try (in order to facilitate program management and the scheduling of assignments) to adhere to a basic workweek of 5 consecutive 8-hour days Monday through Friday, and that "the Department may depart from the basic workweek in those cases where maintaining such a schedule would seriously handicap the Department in carrying out its function."

However, proposed §§ 307.4(b) and 381.37(b), being tailored to accommodate IPI procedures, will differ from proposed §§ 307.4(a) and 381.37(a) in a number of ways. Subparagraphs (1) of §§ 307.4(b) and 381.37(b) would provide that "No operations other than (slaughter or slaughter and evisceration) requiring inspection shall be conducted except under such coverage by Inspection Program employees as the Inspection Program deems to be appropriate to assure effective regulation of (meat food products or poultry products) in commerce and protection of the public health and welfare." This is consistent with the IPI concepts reflected in proposed §§ 302.5 and 381.8. The existing requirement, to be left in §§ 307.4(a)(1) and 381.37(a)(1), that "No operations requiring inspection shall be conducted except *under the supervision* of a Program employee" would now apply only to slaughter/slaughter and evisceration establishments where an Inspection Program employee still must be present in the plant during all operations.

Subparagraph (2) of proposed §§ 307.4(b) and 381.37(b) would be much more abbreviated than subparagraph (2) of proposed §§ 307.4(a) and 381.37(a). Under IPI, the Program still must rely on each establishment maintaining a regular schedule of operations in order to provide inspection coverage, but the times for lunch periods and rest breaks within shifts no longer need to be dictated because under improved processing inspection individual Inspection Program employees' workdays normally would no longer be tied to those of specific establishments; their work schedules would be dictated by the Inspection Program instead of by individual establishments' hours of operation.

Subparagraph (3) of proposed §§ 307.4(b) and 381.37(b) would provide for significant change in how the Program determines what inspection service will be provided free of charge and what inspection service will be subject to reimbursement from establishments under §§ 307.5 and 381.38. It will continue to provide that inspection will be provided during scheduled operations at no cost to the establishment for any 5 consecutive 8-hour days during the administrative workweek Sunday through Saturday, as is presently the case. However, it also provides that, alternatively, inspection coverage would be provided without cost during operations scheduled between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday—up to 12 hours a day and 60 hours per week. The Program's goal in providing this alternative is to encourage as many establishments as possible to conduct their operations during reasonably normal working hours. The planning for and scheduling of inspection activities among various establishments, and communications between Inspection Program managers and employees, would be more easily accomplished the more establishments keep their operation within that time frame. Nonetheless, if the management of an establishment believed that operations had to be conducted outside that time frame, FSIS would still provide up to 5 consecutive 8-hour days of taxpayer-paid inspection within the administrative workweek, as is now the case.

Furthermore, it is expected that the program's policy of granting two full shifts of inspection coverage would not apply to non-slaughter/evisceration operations under proposed §§ 307.4(b) and 381.37(b). The Program no longer would routinely grant without charge two full shifts (16 hours per day) of inspection service, 8-hours more than is provided for establishments that operate less than two full shifts. The most *any* such establishment would be able to expect under IPI would be 12 hours per day of inspection service, as discussed above. Because inspectors no longer routinely to be assigned to one establishment exclusive of others, and, therefore, because inspectors' tours of duty are to be determined by the Program using variables in addition to establishments' hours of operation, there no longer is any justification to continue disparate, more favorable treatment for some processing establishments simply because they conduct two full shifts of operations.

As proposed, §§ 307.4 and 381.37 would also be amended by deleting the reference to §§ 381.4(h) and 381.145(h). These referenced sections are currently cited in §§ 307.4(c) and 481.37(c) as containing exceptions to the rule on specified hours of operation (during which inspection service would be provided without charge). The referenced sections permit processing establishments operating under an approved Total Quality Control (TQC) system to conduct, if approved by FSIS,

operations for up to 12 consecutive hours per shift, subject to a charge for overtime if overtime costs are incurred by the program in monitoring operations after the first 8-hours per day. As discussed hereafter with regard to Parts 318, and 381, subpart G, this special exception for TQC hours of operation would be redundant and inappropriate under IPI, and therefore would be deleted from the regulations.

Under IPI, it will be even more important than it is now for establishments to ensure the program has timely and accurate information on any changes to establishment work schedules. Information on all operations must be provided early enough so that the program can assure adequate coverage. Accommodating such changes may or may not result in additional on-site inspection activities being assigned and inspection program employees having tours of duty modified and/or working overtime. Requests for modifications would have to be made as far in advance as possible if FSIS is to make the most effective use of its available resources and if establishments are to minimize overtime situations. The regulations already provide: that official establishments must submit work schedules that specify daily clock hours of operation for approval to area supervisors, who take into account the efficient and effective use of inspection personnel in considering whether such schedules will be approved; that official establishments must maintain consistent work schedules; and that frequent requests for change in such schedules are not to be approved (9 CFR 307.4(d)(1) and (2) and 381.37(d)(1) and (2); proposed §§ 307.4(c)(1) and (2) and 381.37(c)(1) and (2)).

FSIS is proposing that any changes in an establishment's workweek (in addition to work schedule changes involving additions or eliminations of shifts) be considered significant changes in work schedules for which requests must be submitted at least 2 weeks in advance. (The poultry products inspection regulations already so provide (9 CFR 381.37(d)(2)).) The proviso to this subparagraph, regarding approval of minor deviations from daily operating schedules, would be amended to permit authorization by designated Inspection Program supervisors as well as IIC's (proposed amendments to 9 CFR 307.4(c)(2) and 381.37(c)(2)), because there no longer will be IIC's at processing establishments. Note that "deviations" include decreases as well as increases in hours of operation. Program approval also would be required for extensions of an establishment's operations within the same workday or at the start of the next workday, as is now the case, pursuant to proposed §§ 307.4(c)(3) and/or 381.37(c)(3) of the regulations (9 CFR 307.4(c)(3) and 381.37(c)(3)). Requests "to operate outside an approved work schedule," would be made to the "Designated Inspection Program supervisor," and would replace requests for inspection service for "overtime work" or "overtime service."

As discussed, although inspection coverage under IPI must be provided during all operations the timing and frequency of that inspection is governed by FSIS—not by the establishment. "Inspection coverage" under IPI would include any and all inspection activity at an establishment that the Program deems necessary. Implicitly, even though an inspector may not be present during all operations, the Program has to *be able to* have one or more inspectors present to conduct all inplant inspection tasks that may be appropriate during any operations, and therefore must not only have approved the establishment's schedule of operations, but also must have reasonable notice of *any* variations from that schedule.

Proposed §§ 307.4(c)(1) and 381.37(c)(1) will retain the condition found in current §§ 307.4(d)(1) and 381.37(d)(1) that "in consideration of whether the approval of an establishment work schedule shall be given, the area supervisor shall take into account the efficient and effective use of inspection personnel." Although this provision has seldom been invoked, the Department must retain the discretion to deny inspection and thereby preclude operations when inspection resources are not available.

Concomitant amendments to §§ 307.5(a) and 381.38(a) of the regulations (9 CFR 307.5(a) and 381.38(a)), which recite those instances when reimbursement for inspection services is required, would be amended to include costs of inspection service furnished outside the times and days specified in § 305.4(b)(3) or 381.37(b)(3), that is, not within the period between 6:00 a.m. and 6:00 p.m., Monday through Friday. FSIS believes that as a general principle, overtime costs it incurs in accommodating an establishment's special needs—by providing inspection coverage during unscheduled operations as well as in other situations where overtime must be paid to inspectors (e.g., on Federal holidays)—should be recovered from that establishment. Application of this principle to overtime costs incurred by the program under IPI requires an approach somewhat different from the current inspection system. Because of the discretionary authority provided by the 1986 amendment to the FMIA, under IPI inspection program employees' tours of duty no longer would be directly linked to specific establishment's scheduled hours of operations. The tour of duty of an individual inspection program employee instead will reflect the program's scheduling of various tasks to be conducted at various establishments over a period of time. Under IPI, the program alone determines the frequency and intensity of inspection coverage at each establishment. Consequently, the existing overtime billing policies, which are premised on inspectors being present daily in specific establishments during operations (overtime as well as scheduled) would no longer be applicable. The fact that an establishment operates more than 8 hours a day or 40 hours a week would not necessarily mean that inspection program employees charged with covering the plant during such overtime operations will be on overtime pay, nor does the fact that the program must pay overtime to assure adequate coverage in various establishments necessarily lead to the billing of overtime to such establishments.

Therefore §§ 307.5(a) and 381.38(a) would be amended by adding two clauses to provide for two new situations in which overtime costs would be billed to an establishment.

First, these regulations would be amended to expressly provide that inspection program employee overtime will be billed to establishments when such overtime is incurred and is attributable to the program accommodating an establishment's request for inspection coverage outside (1) the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, or (2) the 5 consecutive 8-hour days otherwise requested to be the basic workweek during which inspection coverage is provided without charge. It is important to note that overtime will be billed, as it is now, only when it is actually incurred by the Program. Under IPI, the program will have wider discretion as to when—or if—an inspection program employee must be at the establishment during such operations. However, the individual inspector conducting inspection activities on an overtime basis need not have been in *that* establishment for the preceding 8 hours (see, *Roy Bryant Cattle Co. v. U.S.*, 463 F.2d 418 (5th Cir., 1972)). The criterion for billing overtime would be that FSIS paid overtime to accommodate

establishment operations conducted outside the basic workweek, as that workweek is defined under proposed §§ 307.4(b)(3) and 381.37(b)(3) and incorporated into an approved schedule of operations.

Second, overtime costs would be billed to an establishment when they are incurred during an establishment's scheduled hours of operation when an inspection program employee attempts to conduct inspection-related tasks at the establishment but finds no operations are in fact being conducted. For deviations from approved schedules that involve cancelling of scheduled operations, reasonable advance notice will be required to preclude the charging of overtime to recover costs the Agency incurred in attempting to accommodate the declared schedule.

These provisions and related provisions in §§ 307.6(b) and 381.39(b) of the regulations (9 CFR 307.6(b) and 381.39(b)) also would be amended in accord with changes in the field structure, and these sections and §§ 307.5(a), 307.6(a), 381.38(a), and 381.39(a) of the regulations (9 CFR 307.5(a), 307.6(a), 381.38(a), and 381.39(a)) would be amended to make their terminology consistent with IPI.

Sanitation: Part 308 and Part 381, Subpart H

Existing regulations require that official establishments be maintained in a sanitary condition, and place primary responsibility for that on the official establishments (9 CFR §§ 308.3 and 381.57 and 381.58). However, many establishments have come to rely on inspectors to detect and ensure correction of any insanitary conditions and practices. Under IPI official establishments would no longer be able to rely on program employees continuously being in the plant, and must on their own volition identify and correct potential sanitation problems to prevent the production of adulterated product. Conversely, inspection program personnel will no longer be able to rely on preventative measured. Insanitary conditions and practices may be found only after adulterated product has been produced resulting in the need to use remedial enforcement tools that generally are more onerous to affected establishments.

As is now the case, inspection program employees conducting inspections under the proposed regulations will continue to have broad discretionary authority with regard to the identification of insanitary conditions and practices under these provisions, and in determining whether and to what extent corrective action must be taken by the establishment. Such action may include prohibiting the use of equipment, utensils, rooms or compartments that the inspecting employee finds to be unclean (9 CFR 307.15 and 381.99), or the retention of product suspected of having been adulterated—or condemnation of products determined to have been adulterated—thereby (9 CFR 318.2 and 381.145; also see, §§ 312.6 and 381.99). FSIS recognizes the continuing need for a close, nonadversarial working relationship with all inspected establishments, and will provide assistance as well as enforcement in matters relating to sanitation. To foster increased efficiency and effectiveness, and to ensure a comprehensive, systematic and to the degree possible uniform approach to such inspections, FSIS management will provide through its directive system additional direction and guidance to its personnel regarding specific inspection tasks and procedures that may be applicable. Official establishments are and will continue to be provided copies, and thus actual notice, of any and all such FSIS directives in matters affecting their operations. FSIS will work directly with individual establishments as may be required to develop or strengthen establishment sanitation plans and procedures.

Therefore, FSIS believes that the sanitation regulations need to be amended to accommodate administratively the increased likelihood that inspection program employees may be present relatively infrequently in some establishments. The proposed changes include additional procedures for use in enforcing sanitation requirements and thereby preventing the distribution of product which "* * * has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or * * * may have been rendered injurious to health" (21 U.S.C. 453(g)(4) and 601(m)(4)) or is otherwise adulterated. Under the proposed rule, § 308.15 of the Federal meat inspection regulations (9 CFR 308.15) would be amended and § 381.58(a) would be added to the poultry products inspection regulations (proposed 9 CFR 381.58(a)) to direct program personnel who tag any equipment, utensil, room, or compartment as "U.S. Rejected" pursuant to § 308.15 or § 381.99 of the regulations (9 CFR 308.15 or 381.99) also to place a "U.S. Retained" tag on products at the establishment which were prepared using equipment or utensils or in rooms or compartments which are tagged "U.S. Rejected" if such products are suspected of being adulterated to assure that such products are held and their disposition is in accordance with the regulations.

FSIS also is proposing to amend §§ 308.3 (c) and (d), 308.5(e), and 308.8 (d) and (f), 308.15, 381.50(f), and 381.53(a)(5) of the regulations (9 CFR 308.3 (c) and (d), 308.5(e), 308.8 (d) and (f), 308.15, 381.50(f), and 381.53(a)(5)) to indicate that circuit supervisors or "other designated Inspection Program supervisor[s]" and IIC's "or other Inspection Program employee[s]" may have the responsibilities referred to therein and to include conforming inspection program terminology.

Official Marks and Devices: Part 312 and Part 381, Subpart M

FSIS believes that with full implementation of an IPI system, the importance of specifically providing for use of appropriate official marks in inspecting meat food products will increase (see, e.g., discussion of proposed 9 CFR 308.15(b), 318.6(a)(2)(ii), 381.58a, and 381.146(b)(3)). The provisions of § 312.6(a) (1), (2), (4), and (5) of the Federal meat inspection regulations (9 CFR 312.6(a) (1), (2), (4), and (5)) were designed for use in connection with post-mortem inspection (see 9 CFR Part 310). Under the proposed rule, paragraph (a) would be restricted to these marks as used in post-mortem inspection, and paragraph (c) would address the "U.S. Rejected" mark, which, as provided in § 312.6(a)(3) of the regulations (9 CFR 312.6(a)(3)), is used to identify insanitary buildings, rooms, and equipment (as prescribed in 9 CFR Part 308) and is appropriate for all inspection situations (proposed amendment to and redesignation of 9 CFR 312.6(a)(3)).

In paragraph (b), the proposed rule would establish two official marks for use by Inspection Program employees in connection with meat food product inspection (9 CFR 312.6(b) as proposed to be amended). These would include the "U.S. Retained" mark, applied by a tag (Form MP–35), for identifying meat food product that is held for further evaluation to determine its disposition (proposed paragraph (b)(1) of 9 CFR 312.6) and a "U.S. Inspected and Condemned" mark, to be applied by means of a tag (with the number to be assigned before issuance of a final rule) rather than a brand, for identifying meat food product that has been found to be adulterated (i.e., as to which an inspection program employee has made a final decision) (proposed paragraph (b)(2) of 9 CFR 312.6). (Conforming changes also would be made in the title

and in paragrpah (b), which would be redesignated as paragraph (d) (proposed amendments to 9 CFR 312.6).)

Sections 381.99 and 381.101 of the poultry products inspection regulations (9 CFR 381.99 and 381.101) already authorize use, as official devices, of such tags as may be approved by the Administrator for the identification and control of poultry products which appear to be not in compliance or are held for further examination, and prescribe "U.S. Condemned" as an official mark, respectively. To provide consistency with the meat inspection regulations, FSIS is proposing to add a new § 381.102 to the regulations (9 CFR 381.102) to provide that a "U.S. Inspected and Condemned" tag (with the number to be assigned before issuance of a final rule) as well as other devices used for applying such mark are official devices that may be used in poultry processing operations. (Conforming changes in inspection program terminology would be made in § 381.99 of the regulations (proposed amendments to 9 CFR 381.99)).

Also, in view of changes being proposed in official sealing under Part 325 of the Federal meat inspection regulations (9 CFR Part 325; see proposed amendments, discussed below), FSIS is proposing to amend § 312.5 of the regulations (proposed amendments to 9 CFR 312.5). As amended, this paragraph would provide an official mark for use in sealing as prescribed by, and any tag as required in, Part 325 of the regulations (9 CFR Part 325), now or in the future (rather than such sealing of means of conveyance and a "Warning Tag").

Finally, in a recent rulemaking (52 FR 41957, November 2, 1987), FSIS added §§ 312.10 and 381.112 to the Federal meat and the poultry products inspection regulations (9 CFR 312.10 and 381.112), respectively, to incorporate an official mark, which is applied with an official device supplied to appropriate Agency personnel by the Department, for use in sealing containers of samples submitted under requirements in the regulations and section 202 of the FMIA (21 U.S.C. 642) or section 11(b) of the PPIA (21 U.S.C. 467b). FSIS believes that these regulations should be clarified in view of the anticipated importance of sampling by inspection program personnel at official establishments under IPI and to utilize regulatory terminology more consistently (see, e.g., §§ 318.9 and 381.146 as proposed to be amended and §§ 320.4 and 381.178). As amended, §§ 312.10 and 381.112 of the regulations (9 CFR 312.10 and 381.112) would specify that the "Sample Seal" mark is to be used in sealing containers of samples "taken by Inspection Program employees, including samples taken by an authorized representative of the Secretary pursuant to section 202" of the FMIA or 11(b) of the PPIA (21 U.S.C. 467b and 642), and that the Department will supply to such personnel the official device for applying this mark.

Disposition of Condemned Products: Part 314

FSIS believes that, in view of amendments to the condemnation-related provisions of section 6 of the FMIA (21 U.S.C. 606; see FTA, section 403(a)) and institution of improved processing inspection procedures in establishments preparing meat food products, the Federal meat inspection regulations should be amended to address the disposition of articles condemned as a result of government inspection at establishments slaughtering livestock (see 9 CFR Parts 309–311) separately from condemnation disposition upon reinspection at establishments preparing meat food products. Therefore, under the proposed rule, the application of §§ 314.1 and 314.3 of the Federal meat inspection regulations (9 CFR 314.1 and 314.3), including their requirements for action by or in the presence of inspection program personnel, would be restricted to the disposition of carcasses and carcass parts condemned "upon ante-mortem or post-mortem inspection or reinspection of slaughtered livestock" at official establishments "slaughtering livestock," and the disposition of products condemned upon government reinspection at official establishments preparing meat food products would be addressed in § 314.13 of the Federal meat inspection regulations (proposed 9 CFR 314.13).

The proposed section (proposed 9 CFR 314.13) includes a set of methods for use by official establishments, under the supervision of inspection program personnel, that have been found effective in preventing use of condemned products as, or as vehicles for adulterating, human food and that are consistent with the requirements for condemned poultry products (9 CFR 381.95). These methods are steam treatment or thorough cooking, incineration or complete destruction by burning, and denaturing as currently prescribed by § 314.3(a) of the regualtions (9 CFR 314.3(a)) or with another material and/or method approved by the Administrator in specific cases (proposed 9 CFR 314.13(a)(1)–(3)).

The proposed amendments to §§ 314.13 and 381.95 also provide that it is the responsibility of the operator of an official establishment to destroy for human food purposes, using one of the approved methods listed, product which it has determined to be adulterated (proposed 9 CFR 314.13 and 381.95). This is in keeping with the essential concept underlying IPI, that the official establishment has the primary responsibility for preventing the distribution of adulterated product to consumers.

Marking Products and Product Containers: Part 316

Part 316 of the Federal meat inspection regulations (9 CFR Part 316) provides exceptions to the general requirements that products and their containers must be marked with the inspection legend before being removed from official establishments. (See also Part 317 of the Federal meat inspection regulations (9 CFR Part 317) regarding the labeling of livestock products and Subpart N of the poultry products inspection regulations (9 CFR Part 381, Subpart N), which requires, among other things, that, except as the Administrator may authorize in specific cases with respect to shipment between official establishments, each shipping and immediate container of any inspected and passed poultry product must bear an approved label at the time it leaves an official establishment (9 CFR 381.115).) Having reevaluated the conditions under which unmarked livestock products may now be moved, and given current industry practices, FSIS believes that these exceptions must be modified to provide for efficient execution of statutory requirements to effectively prevent the distribution of adulterated or misbranded products to consumers (21 U.S.C. 602–607 and 621) once IPI is fully implemented.

The shipping and receiving of unmarked product by establishments is viewed by the inspection program generally as a practice to be carefully controlled to prevent the diversion of unmarked product into commerce in violation of the law. Section 316.8(a) currently permits bulk product that is inspected and passed but unmarked to be shipped from one official establishment to another for further processing, loose in railroad cars, trucks, or other means of conveyance so long as the regulatory control of the product is maintained by placement of an official seal upon the conveyance by an FSIS employee. However, the existing program controls imposed on an unmarked product are premised on the ready availability of inspection program personnel at the official establishment

to oversee the activity, including application of official USDA seals to the container or conveyance prior to the product being transported from the establishment under Part 325, and to that extent would be incompatible with IPI. Under IPI, some establishments might have, among other things, excellent controls over all aspects of their operation and therefore may have program personnel on their premises only infrequently, but still might require the frequent shipping or receiving of unmarked product in the ordinary course of their processing activity.

FSIS is, therefore, proposing to amend § 316.8(a) of the regulations to permit the transport between establishments of unmarked inspected and passed products for further processing without a USDA seal, but with further restrictions. Bulk shipments of unmarked products in railroad cars or trucks would no longer be permitted. This change is designed to preclude loose, bulk shipments inside conveyances that are less easily controlled by the establishments involved, and are likely to be exposed to more handling and other sources of potential contamination. It would permit receiving establishments and FSIS inspection program employees to more easily ascertain the integrity of product entering the establishment. This also comports with the existing provisions of existing paragraph 316.8(b) which prohibits any other movement outside and establishment of unmarked, inspected and passed product unless it is in a closed container. As revised, § 316.8(a) would refer to § 316.8(b) which, as revised, would set forth the only exception to the prohibition of the movement outside or entry into an establishment of unmarked, inspected and passed product.

Section 316.8(b) currently provides that unmarked products that have been inspected and passed but do not bear the official inspection legend may be removed from establishments in closed containers bearing the official inspection legend and all other information required by Parts 316 and 317, but removal of such product from the container must be done under the supervision of a program employee and government reinspection is required before repackaging or remarking. In lieu of the latter provision, § 316.8(b) would adopt the seal requirement currently in § 316.8(a). Thus, all such containerized product would have to be in compliance with Part 325 of the regulations (9 CFR Parts 316, 317, and 325). As discussed later in connection with proposed amendments to § 325.5 of the regulations, all such closed containers would be sealed with unofficial seals, applied by establishments and including their establishment numbers, and would as at present continue to be accompained by shippers certificates when transported from one official establishment to another for further processing (9 CFR 325.5 as proposed to be amended; see also 9 CFR 325.7 and proposed amendments thereto).

Further proposed amendments to § 316.8(b) of the regulations (9 CFR 316.8(b)) are intended to clarify its requirements and assure that they are in accord with the availability of an inspector under IPI. Thus, the transportation requirements of Part 325 of the regulations (9 CFR Part 325) would be cross-referenced, and the proviso regarding removal of product from containers and its further transportation in commerce under the supervision of an inspector would be modified to eliminate that supervision and to provide that such product is subject to reinspection and that its packing in containers must be as required by Parts 316 and 317 of the regulations (9 CFR Parts 316 and 317). (See also § 325.17 of the regulations (9 CFR 325.17) regarding the unloading and storage in transit at approved warehouses of product transported under § 325.5 of the regulations (9 CFR 325.5).)

FSIS also is proposing to amend § 316.10(b) of the regulations (9 CFR 316.10(b)) to require the use of unofficial seals if the official inspection legend and list of ingredients are only shown twice throughout the contents (rather than on each kilogram) of sausage and other products in casings or link form, of the smaller variety, when shipped in properly labeled closed containers exceeding 5 kilograms capacity to another official establishment for further processing. The current requirement that the IIC at the originating establishment identify such a shipment for further processing to the IIC at the destination establishment (by means of Form MP 408-1) would be eliminated as unnecessary if establishment seals are used and as no longer suitable in view of changes in the field structure anticipated under IPI.

In addition, FSIS is proposing to amend § 316.9(b) of the regulations (9 CFR 316.9(b)), which currently permits the application of additional marks of inspection on primal parts of carcass at other establishments after they leave the establishment where they were first inspected, passed and marked. The proposed revision would delete that provision, restricting the branding of primal parts with the official inspection legend to slaughter facilities, where branding is a routine part of the inspection procedures and is conducted by or under the supervision of an inspection program employee. Under IPI, inspection program personnel may not be available to control and supervise the use of official branding devices in post-slaughter preoperation operations. Such control and supervision is required. Under the current system, brand management and control of branded product has been a source of continuing concern to the Department (see, e.g., 50 FR 21422), and there is no feasible way to permit the application of additional marks of inspection at succeeding establishments conducting post-slaughter preparation operations without exacerbating that concern. Processing establishments have available a variety of alternatives to official branding devices by which to affix the official inspection legend, most notably pre-printed packaging.

Similarly, FSIS is proposing to amend § 316.10(a) of the regulations (9 CFR 316.10(a)) to eliminate the requirement that the official marks must be "branded" on sausage and similar product prepared in casings. As noted, a variety of devices are available to producers of such product for the application of the official mark of inspection and other labeling, and it is both feasible and reasonable for FSIS to avoid the complications involved in the use and control of branding devices in these establishments. Although FSIS would eliminate the branding of meat food products under Subchapter A of the regulations (9 CFR Chapter III, Subchapter A), FSIS recognizes that there may be certain technical difficulties associated with application of official marks to products prepared in natural casings, and manufacturers of these, and perhaps other, meat food products may have further information on potential disadvantages or problems associated with at least the alternatives currently available under the regulations. Therefore, in this rulemaking, FSIS also is considering the option of amending § 316.10 of the regulations (9 CFR 316.10) to include a provision pursuant to which meat food products could continue to be branded with required official marks in an establishment that has an approved partial quality control program (see 9 CFR 318.4(d) and (e)) under which the establishment operator or his or her designee exercises responsibility over the proper use and custody of branding devices. Cases in which the Administrator determines that an

establishment's program assures adequate control would be exceptions to the requirements for program employee locking or sealing in § 316.4(b) of the regulations (9 CFR 316.4(b)), which, along with § 307.2(k) of the regulations (9 CFR 307.2(k)), would be amended to so indicate. Interested members of the public are encouraged to submit information and views on the feasibility of alternatives to the current requirements and the option of controlling the branding of meat food products under an approved partial quality control program.

Finally, FSIS is proposing to amend § 316.13(g) of the regulations (9 CFR 316.13(g) to reflect that certain stencils and labels could be used on shipping and immediate containers of properly labeled and marked products based on a presumptive agency approval (see proposed § 317.4(e)), and the reference to § 325.7(b) requirements in § 316.13(e) of the regulations (9 CFR 316.13(e)) would be changed because, as discussed below, FSIS is proposing to include the requirements for product passed for cooking and beef passed for refrigeration in paragraph (a) and modified requirements for pork which has been refrigerated to destroy trichinae in paragraph (b) of § 325.7 of the regulations (9 CFR 325.7(a) and (b) as proposed to be amended). It also should be noted that an FSIS proposal to amend the regulations by eliminating the official sealing requirement for tank cars and trucks used in transporting inspected and passed product to another official establishment or a location operating under voluntary inspection service (which appears to involve only rendered animal fat) was the subject of separate rulemaking proceedings and published as a final rule on July 29, 1988 (53 FR 28632).

Labeling: Part 317 and Part 381, Subpart N

Under the Federal meat and the poultry products inspection regulations (9 CFR 317.4(a) and 381.132(a), respectively), no labeling may be used on any product until it has been approved. Such approval must be obtained by submitting final labeling to the Standards and Labeling Division (SLD), Technical Services, except in those cases in which labeling and labeling modifications may be approved by the establishment's IIC (9 CFR 317.4(e)(3) and 381.132(c)(3)) and where generic approval has been granted for certain modifications of previously approved labeling (9 CFR 317.5(b) and 381.134(b)). Under IPI, IICs would no longer be assigned to processing establishments. However, it is not feasible for the inspection program employees that would conduct inspection at the establishments under IPI to also approve label applications. The establishment's need for review and approval of label applications cannot be anticipated or controlled by the program, and establishments will not be able to predict when program employees will be in the plant. Furthermore, inspection program employees under IPI would rotate among a number of establishments and would be unable to develop the same expertise in product-specific labeling matters as an IIC who routinely reviews label applications. Consequently, FSIS is proposing to permit establishments to use without express prior approval those labels that now may be approved by IICs under §§ 317.4(e)(3) and 381.132(c)(3), based on the theory that such labels could be presumed to be approved under certain conditions. Similar conditions would apply to presumptively-approved labels as now apply to IIC-approved labels; i.e., they may not be false or misleading, and approval must be requested by submission of a formal label application to SLD for filing and periodic audit. However, the establishment would have to designate a specific establishment official to conduct this activity, to better ensure that there is a primary in-plant authority who is familiar with applicable labeling regulations and guidelines and is responsible for assuring such labels are in accord therewith. Also, records of all labels used in the establishment, including related correspondence and documentation, must be maintained at the establishment and made available to inspection program employees upon request. If an audit showed that a labels was in violation of the regulations, the establishment would be notified that the presumption of approval was no longer effective and that until a satisfactory resolution of that labeling issue, the establishment would be ineligible for additional presumptive label approvals, resulting in the necessity to submit future labels to SLD for prior approval in accord with §§ 317.4(a) and 381.132(a).

FSIS also is proposing to amend §§ 317.4(a), (c), and (e), 317.5(a) and (b), 381.132(a) and (c), and 381.134(a) and (b) of the regulations (9 CFR 317.4(a), (c) and (e), 317.5(a) and (b), 381.132(a) and (c), and 381.134(a) and (b)) to provide for the range of inspection program personnel who may be authorized to make other labeling determinations.

Similarly, §§ 317.14 and 381.141 of the Federal meat and the poultry products inspection regulations (9 CFR 317.14 and 381.141), respectively, would be amended to provide for action on obsolete labels by designated inspection program employees rather than "the inspector at" an official establishment, and §§ 317.13 and 381.138(b) of those regulations (9 CFR 317.13 and 381.138(b)) would be amended to provide for authorization of shipments of materials bearing official marks by designated inspection program employees other than IIC's at originating establishments not conducting livestock slaughter or poultry slaughter or evisceration operations (with notifications of other inspection program personnel to be in accordance with instructions issued by the inspection program). Section 381.139(b) of the poultry products inspection regulations (9 CFR 381.139(b)) also would be amended to refer to authorization by an "Inspection Program employee" (rather than an "inspector") to alter, detach, deface, or destroy official identifications.

In addition, FSIS is proposing to amend §§ 317.4(a) and 381.132(a) of the regulations (9 CFR 317.4(a) and 381.132(a)) to specify that a copy of the approval of any labeling, including any labeling upon which generic approval is based, must be maintained by the establishment in which it is to be used and made available for review by inspection program employees. FSIS believes that the only effective means by which an establishment can prevent violations of these sections' prohibition against the use of unapproved labeling is by having documentation that any labeling to be used in the establishment has been approved as prescribed in the regulations. Moreover, by assuring compliance with the labeling regulatory system, manufacturers are executing their responsibility to comply with the statutory requirement that products must bear the information required pursuant to the misbranding provisions of the FMIA or PPIA (21 U.S.C. 453(h) and 601(n)) at the time they leave an establishment (21 U.S.C. 457(a) and 607(b)). (See also sections 7(d) and (e) and 10(b)(1) of the FMIA (21 U.S.C. 607(d) and (e) and 610(b)(1)) and sections 8(c) and (d) and 9(a)(2)(A) of the PPIA (21 U.S.C. 457(c) and (d) and 458(a)(2)(A)).)

Under the proposed rule, an establishment's copies of labeling approvals would be available for review by inspection program employees (proposed amendment to 9 CFR 317.4(a) and 381.132(a)). Since these copies, as well as documentation in the inspection program's own files, could evidence approval of labeling and since program functions may be performed by personnel other than an in-plant

inspector assigned to a particular establishment, FSIS is proposing to amend § 381.137 of the poultry products inspection regulations (9 CFR 381.137) by deleting language restricting the basis for authorizing use of labeling or devices to evidence the inspector has "on file" and replacing the reference to an "inspector" with "Inspection Program employee."

Finally, FSIS is proposing to amend § 317.6 of the Federal meat inspection regulations (9 CFR 317.6) by deleting provisions for use of existing stocks of labels approved prior to the effective date of that section for a 1-year period (with the possible extension of that period for good cause shown). Since the effective date was December 1, 1970 (35 FR 15551–15554, October 3, 1970), these provisions are now obsolete.

Entry of Articles; Product Preparation and Processing: Part 318 and Part 381, Subparts O and X

These portions of the regulations include, among other things, requirements for the processing and other handling of products of livestock previously slaughtered and poultry previously slaughtered and eviscerated in official establishments. FSIS is proposing amendments that would provide for tailoring the conditions and methods of inspection coverage to the regulatory situation presented by a particular establishment processing products from articles that have passed post-mortem inspection. FSIS is also proposing to clarify the regulations and include additional guidance on what is required for compliance with requirements of the FMIA and/or the PPIA and the rules and regulations thereunder. (The proposed amendments utilize the "Inspection Program" terminology discussed earlier.)

Under the proposed rule, §§ 318.1(a) and 318.2(a) of the Federal meat inspection regulations (9 CFR 318.1(a) and 318.2(a)) and § 381.145(b) of the poultry products inspection regulations (9 CFR 381.145(b)) would continue to require establishment operators to identify livestock and poultry products at the time of their receipt and subject such products to government reinspection as deemed necessary. FSIS is proposing, however, to amend the provisions of § 318.1(a) of the Federal meat inspection regulations (9 CFR 318.1(a)) in view of changes anticipated under IPI. As amended, this paragraph would clarify that products previously inspected and passed "in accordance with the regulations" must be so identified and are subject to such reinspection "in accordance with § 318.2 * * *" (and the specification that identification must be "in a manner acceptable to the Inspection Program" would be included in paragraph (a) of that section (proposed amendment to 9 CFR 318.2(a)) rather than in this paragraph). However, products received during program employees' absence would no longer have to be held for reinspection under that section. FSIS also is proposing to clarify § 381.145(b) of the poultry products inspection regulations (9 CFR 381.145(b)) by using "reinspection" terminology and specifying that identification of poultry and livestock products must be "in a manner acceptable to the Inspection Program" and to remove the limitation on program personnel who may deem reinspection to be necessary (proposed deletion of "inspector in charge").

In addition, because the daily presence of an inspection program employee can not be assumed under IPI, § 318.1(a) of the Federal meat inspection regulations (9 CFR 318.1(a)) would no longer single out for government reinspection product originally prepared at an official establishment when returned thereto. Instead, this paragraph would make clear that the establishment operators—not FSIS—are responsible for evaluating the condition of such product to assure that entry and any further use thereof accords with the regulations (see 9 CFR 318.4(b) and 318.6(a)), and for assuring that this evaluation takes place before the product is returned to any part of the establishment other than an approved receiving area. This would not apply to alleged off-condition product regulated under § 325.10(a) and (b). All returned product would continue to be "subject to reinspection by a program employee at the official establishment in such manner and at such times (and as often) as may be deemed necessary to assure compliance * * *" (9 CFR 318.2), based on the particular regulatory situation presented. Additionally, § 318.3 of the regulations (9 CFR 318.3) would be amended to authorize inspection program supervisors other than circuit supervisors to approve places at which articles subject to reinspection may be received. (See also proposed substitution of "Inspection Program employees" for "The inspector" in § 318.2(d) of the regulations (9 CFR 318.2(d)).)

Under §§ 318.2(c) and 381.145(b) of Federal meat and the poultry products inspection regulations (9 CFR 318.2(c) and 381.145(b)), respectively, reinspection may be accomplished through use of statistically sound sampling plans that assure a high level of confidence. Proposed amendments would provide for designation of the type of plan by an "Inspection Program supervisor" (rather than the circuit supervisor) (proposed amendment to 9 CFR 318.2(c)) or the IIC (proposed amendment to 9 CFR 381.145(b)) and make further information concerning sampling plans available through such supervisors (rather than only circuit supervisors).

Part 318 of the Federal meat and Subpart Q of the poultry products inspection regulations (9 CFR Part 318 and Part 381, Subpart Q) also include the provisions under which any owner or operator of an official establishment preparing meat food and/or poultry product(s) may request that the Administrator evaluate a TQC system or Partial Quality Control (PQC) program to determine whether or not it is adequate to result in product(s) so controlled being in compliance with the FMIA or PPIA and the regulations thereunder (9 CFR 318.4(c)–(e) and 381.145(c)–(e)). This process would not be changed by the proposed rule.

The TQC system, when properly understood and executed by the plant, can be an asset in assuring that inplant activities and processes are properly and correctly conducted and controlled. FSIS continues to recommend that the regulated industry continue on its course of learning and applying quality control principles, and to the extent desired by the particular plant or company, will continue to receive TQC and PQC applications for evaluation. The continued use of quality control methods by plants will also help to assure that inspection program personnel are less likely to find nonconformances under IPI, and especially those that could cause more severe regulatory action to occur. Moreover, the reverse is true, that is, the fewer nonconformances found during an inspection visit the greater the likelihood the frequency interval for visits will become lengthened.

However, §§ 318.4(c)(4) and 381.145(c)(4) of the regulations (9 CFR 318.4(c)(4) and 381.145(c)(4)) would be amended to provide that determinations about the adequacy of procedures for preparing a new product for test marketing in an establishment operating under an approved TQC system are to be made by "a designated Inspection Program employee" rather than the IIC, since an IIC may not be designated for such an establishment.

In addition, FSIS is proposing to delete paragraph (h) of §§ 318.4 and 381.145 of the regulations (9 CFR 318.4(h) and 381.145(h)), under which an official establishment with an approved TQC system may request that the Regional

Director approve an operating schedule of up to 12 consecutive hours per shift as an exception to § 307.4(c) or 381.37(c) of the regulations (9 CFR 307.4(c) and 381.37(c)), under which schedules normally are limited to 8-hours per shift. As proposed, §§ 307.4 and 381.37 would provide that any processing establishment could have an operating schedule of up to 12 consecutive hours per day, 6:00 a.m. to 6:00 p.m., Monday through Friday, regardless of whether they were operating under an approved TQC system. Furthermore, FSIS does not wish to encourage the conduct of operations outside those times; the scheduling of inspection assignments under IPI would be made more difficult the more operations are scheduled outside those normal business hours. Therefore, all processing establishments, even establishments operating under approved TQC systems, would be subject to the 8-hour per day limitation on government-paid inspection service unless all operations are to be conducted within the hours of 6:00 a.m. to 6:00 p.m., Monday through Friday. All operations outside those times would require in-plant inspection coverage as may be deemed necessary by the program, and if the inspection activities require the program to pay its employees overtime, the cost would be billed to the establishment, as set forth in §§ 307.5 and 381.38.

Other provisions of Part 318 of the Federal meat and Subparts O and X of the poultry products inspection regulations (9 CFR Part 318 and Part 381, Subparts O and X) address the obligations of establishments and requirements for product processing. As indicated in § § 318.4(b) and 318.6(a) of the Federal meat inspection regulations (9 CFR 318.4(b) and 318.6(a)), certain measures must be taken in order to carry out an establishment operator's responsibility to comply with the FMIA and the regulations thereunder (see, e.g., 21 U.S.C. 610 and 621). Those measures must be subject to Departmental review and inspection program personnel must be furnished with accurate, up-to-date information on product preparation procedures to carry out the Department's duties in implementing the law. FSIS is proposing to clarify these regulations by specifying that the necessary measures include those which assure the acceptability of all articles used in preparing products and Departmental review includes records documenting such measures (proposed amendments to 9 CFR 318.4(b)) and by indicating that information must be furnishing to "Inspection Program employees" when changes in product preparation "may affect" (rather than is "essential for") inspectional control of the product (proposed 9 CFR 318.6(a)(2)(i)).

Operators of establishments processing poultry products have comparable obligations (see, e.g., 21 U.S.C. 458(a), 459, and 463(b)), as does the Department in carrying out its duties in implementing the law. Therefore, FSIS also is proposing to amend the poultry products inspection regulations to include additional guidance on compliance requirements by specifying, in proposed paragraph (b) of § 381.146 (9 CFR 381.146), that such appropriate measures, subject to Department review, are needed and that such accurate information must be furnished on procedures involved in further processing of poultry product (including product composition) and changes therein that may affect inspectional control.

In performing their functions at official establishments, inspection program personnel may take samples of articles pursuant to §§ 318.9 and 381.146 of the Federal meat and the poultry products inspection regulations (9 CFR 318.9 and 381.146), respectively. FSIS expects that such sampling will be of increased importance under IPI. Therefore, the proposed rule would clarify these provisions by specifying that sampling deemed necessary for the efficient conduct of inspection under the FMIA includes sampling "to determine compliance with the regulatory requirements" (proposed amendment to 9 CFR 318.9) and that samples may be taken by inspection program employees as "otherwise deemed necessary for the efficient conduct of inspection" under the PPIA (proposed amendments to 9 CFR 381.146).

In additional, FSIS believes that the Federal meat and the poultry products inspection regulations should be amended to include specific enforcement procedures for use by inspection program employees who determine that establishment procedures are resulting in the preparation of meat food products or further processing of poultry products which are suspected of being adulterated or misbranded. Under proposed §§ 318.6(a)(2)(ii)(A) and (B) and 381.146(b)(3)(i) and (ii) (proposed amendments to 9 CFR 318.6 and 381.146), when an inspection program employee makes such a determination, all product(s) remaining at the establishment that have been prepared or further processed using such a procedure (or procedures) would be held under a "U.S. Retained" tag for disposition in accordance with the regulations, and none of the information required by the Federal meat or the poultry products inspection regulations (9 CFR Parts 316 and 317 and Part 381, Subpart N, respectively) would be placed thereon, or on any product subsequently prepared using such procedure, until the establishment has corrected the problem and an opportunity has been afforded for an inspection program employee to evaluate the adequacy of the corrective action taken. FSIS views this enforcement mechanism as appropriate for use in assuring the correction of problems with establishment procedures and preventing the distribution of adulterated or misbranded meat food and further processed poultry products under IPI.

The proposed rule would make further amendments in regulations addressing various processes, inspection situations, and products. Section 318.4(a) of the Federal meat inspection regulations (9 CFR 318.4(a)) would be amended to require that processes used in curing, pickling, rendering, canning, or other product preparation shall be "conducted under inspection coverage" rather than "supervised by Program employees." Similarly, § 318.15 of the Federal meat inspection regulations (9 CFR 318.15) would be amended to provide that chemicals, preservatives, cereals, spices, and other substances intended for use in official establishments are "subject to examination" by inspection program employees, rather than that they "shall be [so] examined," with decisions about the separation required of such substances which are tagged "U.S. Retained" to be made by inspection program supervisors in addition to circuit supervisors.

Provisions of §§ 318.14 and 381.151 of the Federal meat and the poultry products inspection regulations (9 CFR 318.14 and 381.151), respectively, which prescribe procedures for handling products when there is polluted water in an official establishment, also would be amended to assure that they are adequate for the full range of inspection situations presented, including the various conditions and methods of inspection coverage expected in establishments subject to IPI procedures. Under the proposed rule, the operator would notify the IIC or the inspection program supervisor designated for an establishment preparing meat food products or further processing poultry products as soon as possible (proposed amendments to 9 CFR 318.14(a) and 381.151(a)). The establishment's subsequent cleaning

and examination of hermatically sealed product containers which have been contaminated would be under "such Inspection Program supervision as the Inspection Program determines is appropriate," rather than under the "supervision of an inspector" (proposed amendments to 9 CFR 318.14 (b) and (c) and 381.151 (b) and (c)).

In addition, the Federal meat inspection regulations would continue to require, in § 318.10(c)(2)(v) (9 CFR 318.10(c)(2)(v)), that pork products must be kept separate from other products during refrigeration to destroy trichinae, but such products would no longer have to be in the inspection program's custody and secured with a program lock or seal. Instead, an establishment lock or seal would be required and such products would be subject to inspection program supervision, as determined to be appropriate in particular situations, to prevent unauthorized access. By mandating that product be kept separate and as the designated inspection program supervisor may require, rather than under close inspector supervision, the proposed rule would provide for the exercise of increased inspection program discretion after completion of the prescribed freezing until preparation of product covered by § 318.10(b) of the regulations (9 CFR 318.10(b)) in finished form or transportation to another establishment for such preparation. (Transportation must be in compliance with § 325.7 of the regulations (9 CFR 325.7) and, as discussed below, that section would be amended to eliminate shipment loose in "sealed railroad cars, * * * motortrucks, [or] * * * trailers" and require that closed containers be sealed with unofficial seals (proposed amendments to 9 CFR 318.10(c)(2) (v) and (vi)).) Additionally, proposed amendment to § 318.10(d) of the regulations (9 CFR 318.10(d)), would substitute "Designated Inspection Program" for "Circuit" supervisors.

Proposed amendments to §§ 318.5(a)(1) and 318.6(b) of the Federal meat inspection regulations (9 CFR 318.5(a)(1) and 318.6(b)), currently written on the basis that an inspector is present, and would more clearly state that it is the establishment's responsibility to assure compliance with respect to product placed in freezers (see 9 CFR 318.4(b) and 318.6(a)). The proposed rule would make explicit the establishment's obligation to defrost a sufficient quantity of frozen product to determine its actual condition when there is reason to doubt such product's soundness (proposed amendment to 9 CFR 318.5(a)(1)). (Defrosting would be done with the use of facilities acceptable to the "Inspection Program" (proposed amendment to 9 CFR 318.5(a)(2)).)

By revising the provisions regarding casings to be used as meat food product containers and dry milk products intended for use in preparing meat food products, which are requirements for use, and omitting references to program employee inspection and findings of acceptability, the proposed rule would clarify the establishment's obligation to assure that the prescribed conditions are met (proposed amendments to 9 CFR 318.6(b)(2) and (10)). (See also clarification that § 318.6(b)(1) of the regulations (9 CFR 318.6(b)(1)) applies to "meat food" products.)

The inspection and inspector "supervision" requirements of §§ 318.12 and 318.152 of the Federal meat and the poultry products inspection regulations (9 CFR 318.12 and 381.152), relatively, for official establishments preparing pet food or other inedible products also would be amended. The time during which such manufacturing may take place in edible product departments would continue to be restricted, but based on the hours during which the establishment operates under "inspection, in accordance with" § 307.4(a) or 381.37(a) of the regulations (9 CFR 307.4(a) and 381.37(a) as proposed to be amended) and, in establishments subject to the FMIA, its "approved work schedule" (proposed amendments to 9 CFR 318.12(a) and 381.152(a)). Manufacturing in other parts of an establishment would be subject to "inspectional control" (proposed amendments to 9 CFR 318.12(b) and 381.152(b)).

Finally, FSIS is proposing amendments to reflect anticipated changes in the structuring of in-plant and supervisory inspection program functions under IPI. FSIS expects to move away from the current practice of assigning particular in-plant inspection program personnel to particular establishments. Therefore, in §§ 318.302(c) (1) and (2), 318.308(d)(1), and 318.309(d) (1) and (2) of the Federal meat and §§ 381.302(c) (1) and (2), 381.308(d)(1), and 381.309(d)(1) and (2) of the poultry products inspection regulations on canning and canned products (9 CFR Part 318, Subpart G, and Part 381, Subpart X), references to submissions to and notification of the inspector at the establishment would be replaced with "designated Inspection Program employee" references. Paragraph (b) of § 318.8 of the Federal meat inspection regulations (9 CFR 318.8) would require that the preparation and packing of export product (as provided for in paragraph (a)) be done in a manner acceptable to the "Inspection Program" (rather than the IIC). And under § 318.17(f), (h)(1), (i)(3), and (k) of the Federal meat inspection regulations on handling, processing, and storing cooked beef, roast beef, and cooked corned beef (9 CFR 318.17(f), (h)(1), (i)(3), and (k)), reliance would be placed on establishment identification of the processing procedure used and program functions performed by the "designated Inspection Program supervisor" (rather than the IIC or circuit supervisor).

Records and Reports: Part 320 and Part 381, Subpart O

Under IPI, the importance of records in assuring effective regulation of meat food and poultry products will increase. The regulations already require the maintenance of records and availability of various types of information used by the inspection program in preventing the distribution of adulterated or misbranded products to consumers, including the records required to be kept by § 320.1(b) of the Federal meat and § 381.175 of the poultry products inspection regulations (9 CFR 320.1(b) and 381.175(b)). Among these are documentation of transactions involving the purchase, sale, labeling, shipment, receipt, transportation, or other handling of meat food and poultry products in connection with any various businesses subject to the FMIA or PPIA (9 CFR 320.1 (a) and (b)(1) and 381.175 (a) and (b)(1), respectively).

FSIS is proposing to amend these requirements by adding (1) records of the destruction for human food purposes of meat food products and further processed poultry products found by the operator of an official establishment to be adulterated (proposed 9 CFR 320.1(b)(7) and 381.175(b) (4)), and (2) records of all labels used in the establishment (proposed 9 CFR 320.1(b)(8) and 381.115(b)(5)). To the extent official establishments do not already keep records of dispositions of adulterated product, this requirement would complement the existing provisions in §§ 320.1(b) and 381.175(b) (9 CFR 320.1(b) and 381.175(b)) by disclosing the handling of products which, if capable of use as human food, may not be sold, transported, offered for sale, or offered or received for transportation in commerce (21 U.S.C. 458(a)(2)(A) and 610(b)(1)). This is particularly appropriate in view of Congressional action specifically recognizing the responsibility of establishment operators to determine that meat food products either are adulterated or not adulterated (21 U.S.C.

606(b); FTA, section 403(a)). Similarly, establishment operators are responsible for ensuring their products are not misbranded and are properly labeled (21 U.S.C. 457, 607). Under IPI, operators will be able to use more labels without explicit prior approval from the inspection program than before, but will be responsible for maintaining records at the plant of all labels being used for reference and review as needed by inspection program personnel on their visits to the plant.

FSIS also is proposing to amend the information and reporting provisions in §§ 320.6(a) and (b), 320.7, 381.180(a), and 381.182 of the regulations (9 CFR 320.6(a) and (b), 320.7, 381.180(a), and 381.182) in view of changes anticipated under IPI. These include utilization of less than daily inspection coverage of operations where appropriate and modifications in the inspection program's field structure (e.g., reporting on inspection work by program personnel in addition to IIC's).

Exports: Part 322 and Part 381, Subpart M

FSIS is proposing to amend provisions of the Federal meat inspection regulations regarding the issuance of official export certificates to reflect anticipated changes in the field structure. As amended, § 322.2(a), (f), and (h) of the regulations (9 CFR 322.2(a), (f), and (h)) would provide for the issuance of such certificates by "designated Inspection Program employee[s]" in addition to IIC's, their issuance by "Inspection Program employees" for consignments of establishments, "at which they do not regularly perform Inspection Program functions" (rather than "not under their supervision"), and retention of the triplicate of the certificate in "an appropriate Inspection Program" (rather than the "circuit") file.

The Export Coordination Division (ECD), International Programs, FSIS will coordinate the issuance of export certificates. Exporters will request an authorization to export from ECD and provide full details of the export consignment. ECD will be responsible for determining that all foreign requirements have been satisfied and will subsequently issue the export certificate. Documentation of the export consignment will be filed in appropriate Inspection Program offices. Coordination of this service from FSIS headquarters will better ensure adequate coverage is made available to all requests in a timely manner under IPI.

Transportation: Part 325

Part 325 of the Federal meat inspection regulations (9 CFR Part 325) includes, among other things, requirements for transporting those unmarked inspected and passed products that, pursuant to Part 316 of the regulations (9 CFR Part 316), may be moved from one official establishment to another for further processing. FSIS has reevaluated these requirements, in conjunction with its review of Part 316, and believes that they should be modified in view of changes in the system of inspection to be applied at establishments preparing meat food products.

The principle underlying the statutory discretionary inspection authority, a key element of IPI, is that the frequency and the manner of government inspection should reflect the performance and the characteristics of particular establishments. Therefore, significant variations are anticipated in the conditions and methods of inspection coverage of operations in establishments preparing meat food products from livestock previously slaughtered in official establishments, including coverage by inspection program employees on a less than daily basis when appropriate (see proposed 9 CFR 302.5). Moreover, with the institution of IPI, FSIS expects a decrease in reliance on inspection program personnel by establishments in fulfilling their statutory responsibilities.

Consequently, for the reasons discussed with regard to similar changes proposed for § 316.8, FSIS proposes to change the existing procedure in § 325.5(a) of the regulations (9 CFR 325.5(a)) for transporting unmarked inspected and passed products in railroad cars, motortrucks, or other means of conveyance that are sealed with official seals which may only be affixed or (except in an extraordinary emergency) broken by inspection program employees (see 9 CFR 312.5(a) and 325.16(b)). Under the proposed rule, all such products would be packed in closed containers bearing the official inspection legend and all other required information (9 CFR 316.8(b)), and each such container would be sealed with an unofficial seal that is applied by the establishment from which such product is transported and includes its establishment number (proposed amendments to 9 CFR 325.5(a)). When such products are offered for transportation, they would, as currently required, be accompanied by a certificate, made out in duplicate by the shipper and delivered to the initial carrier, with retention by each 9 CFR 325.5(b); see also 9 CFR Part 320 regarding shippers' records). However, the form of the certificate would be revised by substituting information or specified closed containers and sealing by the official establishment for the information on placement in any official sealing of means of conveyance that is currently required (proposed amendments to 9 CFR 325.5(b)).

FSIS believes that cattle and sheep paunches transported from one official establishment to another for further processing should continue to be subject to the same requirements as are applied to unmarked inspected and passed products so transported under § 325.5(a) of the regulations (9 CFR 325.5(a)). Therefore, § 325.6 of the regulations (9 CFR 325.6) would only be amended to conform with the proposed amendments to that provision by deleting references to official sealing. (Section 325.5(b) of the regulations (9 CFR 325.5(b)) already provides for shipper certification when paunches are offered for transportation.)

The regulations also provide, in § 325.7 (9 CFR 325.7), for the shipment of products passed for cooking, pork that has been refrigerated to destroy trichinae, and beef that is to be refrigerated to destroy cysticerci from one official establishment to another for further handling in accordance with Part 318 of the regulations (9 CFR Part 318). FSIS is not proposing to change the requirement that product passed for cooking and beef that is to be refrigerated to destroy cysticerci may only be shipped between official establishments under official seal. Such meat and meat byproducts have been only conditionally inspected and passed; the handling required before they may be distributed to consumers has not been completed (see 9 CFR 301.2(cc); 301.2(dd); 311.1(a); 311.2(d); (f), and (h); 311.18(b) and (e); 311.20(b); 311.23(a)(2); 311.24; 311.35(c); 315.1; and 315.2). Therefore, inspectional control of these products must be guaranteed. FSIS believes that use of official seals, which if affixed, detached, broken, changed, or tampered with in any way by a person other than an inspection program employee constitutes a criminal offense (9 CFR 325.16(b); 21 U.S.C. 611 and 676), is the only effective means of maintaining such control.

However, pork that has been refrigerated to destroy trichinae already has been treated in accordance with § 318.10(c)(2) of the regulations (9 CFR 318.10(c)(2)). The focus of concern when such product in transferred to another establishment for further preparation into finished products for which treatment to destroy any possible live

trichinae is required (instead of being so prepared in the establishment in which it was refrigerated (see 9 CFR 318.10(b) and 318.10(c)(2)(v) as proposed to be amended)) is maintaining its identity as pork which already has been refrigerated, rather than maintaining inspectional control. Consequently, FSIS believes that the procedure for transporting product that has been refrigerated to destroy trichinae should be comparable to the one for products transported for further processing pursuant to § 325.5 of the regulations (9 CFR 325.5).

FSIS also believes that, as with products transported for further processing pursuant to § 325.5 of the regulations (9 CFR 325.5), shipment of products covered by § 325.7 of the regulations (9 CFR 325.7) should be only in closed containers and not loose in railroad cars, trucks, or other means of conveyance (proposed deletion of paragraph (a) of 9 CFR 325.7). Under the proposed rule, pork that has been refrigerated to destroy trichinae would be packed in closed container(s) individually sealed with an unofficial seal that is applied by the establishment from which such product is transported and includes its establishment number, and such containers would bear the official inspection legend and the statement, currently marked thereon, "Pork Product—°F.—Days Refrigeration" (9 CFR 325.7(b) as proposed to be amended). Individual closed containers of product passed for cooking and beef that is to be refrigerated to destroy cysticerci would continue to be sealed with the Department's prescribed official seal and as otherwise already required by the regulations (9 CFR 325.7(a) as proposed to be amended).

In addition, in view of anticipated changes in the field structure, FSIS is proposing to modify the procedure used by inspection program personnel at establishments shipping restricted products to notify inspection program personnel at destination establishments (9 CFR 325.7(b)). The inspection program employee affixing official seal(s) to containers of product passed for cooking or beef that is to be refrigerated to destroy cysticerci would promptly issue and forward to the "Inspection Program supervisor designated for" the destination establishment (rather than the IIC at destination) a report on the consignment, and he or she would forward a duplicate copy to the area office for the area where the establishment from which such product is shipped in located (rather than retaining such copy "in the program files") (9 CFR 325.7(a) as proposed to be amended).

FSIS is not proposing to change the requirement that when products are offered for transportation under § 325.7 of the regulations (9 CFR 325.7), they must be accompanied by a certificate, made out in duplicate by the shipper and delivered to the initial carrier, with retention by each (9 CFR 325.7(c); see also 9 CFR Part 320 regarding shippers' records). However, because the regulations currently require such certificate to be "in the form set out in § 325.5(b)" and that form would be revised to apply to products shipped under unofficial seal, FSIS is proposing to supplement the reference to that form by including an exception for product passed for cooking and beef that is to be refrigerated to destroy cysticerci: the certificates would indicate that the contents are restricted products in specified containers sealed with official seals (proposed amendment to 9 CFR 325.7(c)).

As indicated above, official seals may be broken only by inspection program employees. Under IPI, situations will increase in which no inspection program employee would be present when an establishment preparing meat food products receives products transported pursuant to § 325.7 of the regulations (9 CFR 325.7). Disruptions vis-a-vis carriers would by avoided by application of official seals to product containers rather than the means of conveyance (e.g., a railroad car) used in transporting such products, since such containers could be unloaded at receiving establishments without breaking official seals. To assure that the official seals on such containers are broken in a timely manner, FSIS also is proposing to amend § 325.16(b) of the regulations (proposed amendment to 9 CFR 325.16(b)) to provide that "[i]f no Inspection Program employee is present at an official establishment receiving product transported under official seal, the Inspection Program supervisor designated for such establishment will, when notified by that establishment, arrange for the breaking of such seal(s) by an Inspection Program employee."

In view of these proposed amendments, and FSIS's proposal to eliminate the sealing requirement in § 316.14(b) of the regulations (proposed removal of 9 CFR 316.14(b); 52 FR 45639, December 1, 1987), several further, conforming changes would be made in the regulations. In addition to the previously noted changes to §§ 312.5, 316.13(e), and 318.10(c)(2)(vi) (proposed amendments to 9 CFR 312.5, 316.13(e), and 318.10(c)(2)(vi)), § 325.17 of the regulations (9 CFR 325.17), which addresses the unloading and loading of railroad cars, trucks or other means of conveyance containing unmarked products while en route between official establishments, would be amended to reflect the fact that such means of conveyance would no longer be officially sealed. Section 325.18(b) of the regulations (9 CFR 325.18(b)), which provides an exception (for extraordinary emergencies) to the general prohibition against the breaking of official seals by anyone other than program employees, and the cross-reference to that exception in § 325.16(b) of the regulations (9 CFR 325.16(b)) would be deleted because means of conveyance would no longer be officially sealed.[7] (Paragraph (a) of § 325.16 of the regulations (9 CFR 325.16(a)) also would be amended to reflect the fact that the cited regulation no longer includes a paragraph designation.)

FSIS recognizes that implementation of its proposed changes in the procedures for transporting products under §§ 325.5 amd 325.7 of the regulations (9 CFR 325.5 and 325.7) could increase costs for some industry members. In developing the proposed rule, FSIS has sought to minimize such potential costs. However, options such as permitting the routine breaking of official seals by employees of official establishments or the use of unofficial seals on means of conveyance do not at this time appear to be appropriate or provide adequately for effective regulation of products shipped between official establishments for further processing. Interested members of the public are encouraged to submit additional information regarding methods for assuring the efficient and effective control of such products under the FMIA.

Finally, FSIS is proposing modifications in certain procedural aspects of § 325.10 of the regulations (9 CFR 325.10). This section provides for transportation of products in commerce to an official establishment, after obtaining permission from the area supervisor of the area in which such establishment is located, for a careful inspection and further handling and disposition as appropriate when marked, inspected and passed product is claimed to have become adulterated after being transported from an official establishment. Particularly since an area

[7] FSIS has proposed amendments to §§ 325.1(b)(2), 327.7, and 381.200 of the regulations (9 CFR 325.1(b)(2), 327.7, and 381.200) which would eliminate transportation under official import seal prior to inspection of products offered for importation. (53 FR 17059, May 13, 1988.)

supervisor may not know when such a shipment will arrive at an establishment preparing meat food products, no inspection program employee may be present. Also, under IPI, different inspectors may be assigned to that establishment at different times. Therefore, under the proposed rule, the area supervisor would provide a copy of his or her record authorizing and identifying the shipment to the "Inspection Program supervisor designated for" (rather than the "inspector at") the receiving establishment (proposed amendment to 9 CFR 325.10(a)); and if no inspection program employee is present upon arrival of the shipment, the receiving establishment must notify the designated supervisor who will, when so notified, arrange for a careful inspection by an inspection program employee (proposed amendment to 9 CFR 325.10(b)). If the article is then found to be not adulterated and is fit for use as human food, it may then be received into the establishment as currently provided.

Imports: Part 327 and Part 381, Subpart T

The proposed rule would not change the conditions for importation of meat or meat food or poultry products. Meat or meat food products or poultry products from a foreign country are eligible for importation into the United States only after the Administrator has determined that the system of meat or poultry inspection maintained by that country with respect to establishments preparing products for export to the United States insures compliance of such establishments and their products with requirements at least equal to all the provisions of the FMIA or the PPIA and the regulations in Parts 301-335 or Part 381 which are applied to official establishments and their products in the United States and that reliance can be placed upon the certificates required from such country's authorities (9 CFR 327.2(a)(1) and 381.196(a)(1), respectively; see also 9 CFR 327.1-327.4 and 381.195-381.197 generally). FSIS is proposing, however, several conforming amendments to reflect the change to IPI for operations preparing meat food products or further processing poultry products. In other words, these amendments are intended only to clarify the regulations by recognizing modifications in certain inspection requirements which are applied to official establishments and their products under the system of Federal inspection in the United States and with respect to which foreign meat and poultry inspection systems must impose "at least equal to" requirements.

The proposed rule would amend subparagraph (2) of §§ 327.2(a) and 381.196(a) of the regulations (9 CFR 327.2(a)(2) and 381.196(a)(2)) to provide that, in determining the acceptability of a foreign meat or poulty inspection system, the legal authority and regulation requirements which must be met include direct and continuous supervision of slaughtering and "official coverage and controls for all other" product preparation or processing (proposed amendment to subparagraph (2) (ii) (*d*)) and offical controls "for assuring that condemned material is" destroyed or removed and thereafter excluded from the establishment (rather than such controls "over condemned material until" it is so destroyed or removed and excluded) (proposed amendment to subparagraph (2) (ii) (*g*)). In addition, § 327.4(b) of the regulations (9 CFR 327.4(b)) would be amended by deleting "continuous supervision of an inspector under" from the foreign-meat-inspection certificate that must accompany meat food product consigned to the United States from a foreign country. (The form of the foreign poultry products inspection certificate does not include comparable language (9 CFR 381.197(b)).)

Designated States: Part 331 and Part 381, Subpart V

The Federal meat and the poultry products inspection regulations include special provisions for "States" (including the Commonwealth of Puerto Rico and organized Territories) designated under section 301(c) of the FMIA or section 5(c) of the PPIA (21 U.S.C. 454(c) and 661(c)). The amendments being proposed to these provisions are intended to reflect anticipated changes in the inspection program's supervisory field structure and a previous change in FSIS's headquarters organization as regards marking and labeling responsibilities. Proposed amendments to subparagraphs (1), (2), and (4) of §§ 331.3(e) and 381.222(d) of the regulations (9 CFR 331.3(e) (1), (2), and (4) and 381.222(d) (1), (2), and (4)) would replace circuit supervisor with Inspection Program supervisor terminology in describing the responsible inspection program personnel. Proposed amendments to subparagraphs (2) and (3) of §§ 331.3(e) and 381.222(d) of the regulations (9 CFR 331.3(e) (2) and (3) and 381.222(d) (2) and (3)) would replace references to the Labeling and Packaging Staff with the Standards and Labeling Division as the organizational unit to which copies of labeling and descriptions of marking devices granted temporary approval are to be sent.

Supplemental Rules of Practice: Part 335

As indicated above, FSIS is proposing to amend § 305.5(a) of the Federal meat inspection regulations (9 CFR 305.5(a)) to reflect the current language of section 6(b)(2) of the FMIA (21 U.S.C. 606(b)(2)), as amended by the FTA (section 403 (a)). That section of the regulations would continue to provide that inspection withdrawal is to be in accordance with the applicable rules of practice. Among those rules are the provisions of § 335.11 of the regulations (9 CFR 335.11). The proposed rule would amend § 335.11 of the regulations (9 CFR 335.11) to address the withdrawal of inspection service when the Administrator has reason to believe that an establishment receiving inspection service has failed to fulfill its statutory responsibility (21 U.S.C. 606(b)) to determine whether or not meat food products are adulterated and to condemn and destroy all products found to be adulterated. This responsibility is the functional and legal equivalent of the responsibility of the operator to destroy for human food purposes product that has been condemned by an inspection program employee (see proposed §§ 314.13 and 381.95).

Proposed rule

List of Subjects

9 CFR Part 301

Meat inspection; Inspection program defintions.

9 CFR Parts, 302, 303, 305, 308, and 312

Meat inspection, Requirements.

9 CFR Parts 306 and 307

Meat inspection, Requirements, Government employees.

9 CFR Part 314

Meat inspection.

9 CFR Parts 316 and 317

Meat inspection, Meat and meat food products, Food packaging, Food labeling.

9 CFR Part 318

Meat inspection, Requirements, Meat and meat food products, Food packaging, Food labeling.

9 CFR Part 320

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 322

Meat inspection, Exports.

9 CFR Part 325

Meat inspection, Requirements, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 327

Meat inspection, Imports.

9 CFR Part 331

Meat inspection, Requirements, State designation.

9 CFR Part 335

Administrative practice and procedure.

9 CFR Part 381

Definitions, Requirements, Government employees, Poultry products inspection, Official marks, Food packaging, Food labeling, Reporting and recordkeeping requirements, Imports, State designations.

For the reasons set forth in the preamble, the following amendments to the Federal meat inspection regulations (9 CFR Parts 301–303, 305–308, 312, 314, 316–318, 320, 322, 325, 327, 331, and 335) and the poultry products inspection regulations (9 CFR Part 381) are proposed:

PART 301—DEFINITIONS

1. The authority citation for Part 301 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Paragraphs (f), (h), (j), (k), (ff), (mmm), and (nnn) of § 301.2 would be revised to read as follows:

§ 301.2 Definitions.

* * * * *

(f) *Program* or *Inspection Program.* The organizational unit within the Department having the responsibility for carrying out the provisions of the Act and the rules and regulations thereunder.

* * * * *

(h) *Program employee* or *Inspection Program employee.* Any inspector or other individual employed by the Department or any cooperating agency who is authorized to perform any function in connection with the Inspection Program.

* * * * *

(j) *Circuit supervisor.* An Inspection Program supervisor with responsibility for supervising the carrying out of Inspection Program functions at more than one official establishment.

* * * * *

(k) *Inspection Program supervisor.* An Inspection Program employee who is delegated authority to exercise supervision over one or more phases of the Inspection Program at a designated level.[1]

* * * * *

(ff) *U.S. retained.* This term means that the carcass, viscera, other part of carcass, or other product, or other article so identified is held for further examination by an inspection program employee to determine its disposal.

* * * * *

(mmm) *Area.* The organizational unit within the inspection program reporting to regional offices and responsible for the supervision of one or more circuit supervisors and/or other inspection program supervisors and for providing inspection coverage for establishments within a designated geographical area.

(nnn) *Inspector in charge.* An Inspection Program employee who is designated as having primary responsibility for Inspection Program functions at a particular official establishment.

* * * * *

3. Paragraph (eee) of § 301.2 would be amended by replacing "or rendering" with "rendering, or otherwise manufacturing or processing" and by replacing "establishments" the second place it occurs with establishment(s)."

PART 302—APPLICATION OF INSPECTION AND OTHER REQUIREMENTS

4. The authority citation for Part 302 would be revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438, 100 Stat. 3556, 3567–72; (21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k); Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*).

5. Part 302 would be amended by adding new §§ 302.4 and 302.5 to read as follows and the Table of Contents would be amended accordingly:

§ 302.4 Inspection of products.

The Administrator will ensure inspection of products is conducted by Inspection Program Employees as is necessary and appropriate under the Act and the regulations. The conditions and methods of inspection will vary among establishments, depending on the nature of operations, compliance history, and other conditions unique to each establishment. The conditions and methods of inspection will necessarily change from time to time to accommodate advances in inspection techniques and/or changes in establishment operations. Consequently, designated Inspection Program employees will determine for each establishment what inspection-related tasks and activities are appropriate, in accordance with guidelines provided by the Administrator that catalogue all current inspection tasks and activities that may apply in various establishments under various circumstances. Such guidelines shall be available for reference and use by the official establishments. Assigned inspection tasks and activities will be conducted by individual program employees as directed by the inspection program.

§ 302.5 Frequency and manner of inspection.

(a) In establishments preparing products at which inspection under the regulations is required, the frequency with which and the manner in which meat food products made from livestock previously slaughtered in official establishments are examined and inspected by Inspection Program employees shall be based on considerations relevant to effective regulation of meat food products and protection of the health and welfare of consumers and be determined in accordance with this section.

(b) The determinations referred to in paragraph (a) of this section shall be made by the Inspection Program and shall reflect its evaluations of the performance and the characteristics of such establishments.

(1) In assessing the performance of an establishment, the following factors are appropriate for consideration:

(i) The history of compliance with applicable regulatory requirements by the person operating at such establishment or by anyone responsibly connected with the business that operates such establishment, as "responsibly connected" is defined in section 401(g) of the Act;

(ii) The procedures used in such establishment to control the production process, environment, and resulting product in order to assure and monitor compliance with the requirements of the Act and the rules and regulations thereunder.

(2) In assessing the characteristics of an establishment, the following factors are appropriate for consideration:

(i) The complexity of the processing operation(s) conducted at such establishment,

[1] Information identifying the employees who have been delegated such authority is available from the Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(ii) The frequency with which each such operation is conducted at such establishment,

(iii) The volume of product resulting from each such operation at such establishment,

(iv) Whether and to what extent slaughter operations also are conducted at such establishment,

(v) What, if any, food products not regulated under this Act or the Poultry Products Inspection Act also are prepared at such establishment, and

(vi) The size of such establishment.

(c) The Inspection Program shall base the conditions and methods of inspection coverage of operations other than slaughter in an establishment making meat food products from livestock previously slaughtered in official establishment(s) on:

(1) The history of compliance at the establishment,

(2) The evaluation of the characteristics of such establishment described in paragraph (b)(2) of this section,

(3) The control procedures described in paragraph (b)(1)(ii) of this section,

(4) The significance of potential public health consequences of noncompliance, and

(5) The competence of the person conducting operations at such establishment, as indicated by:

(i) Knowledge of appropriate manufacturing practices and applicable regulatory requirements,

(ii) Demonstrated ability to apply such knowledge in a timely and consistent manner, and

(iii) Commitment to correcting deficiencies noted by Inspection Program employees and otherwise assuring compliance with applicable regulatory requirements; and

(6) The availability of Inspection Program employees.

PART 303—EXEMPTIONS

6. The authority citation for Part 303 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438 (21 U.S.C., 601 *et seq.*, Pub. L. 99–641, Title IV, 100 Stat. 3556, 3567–72, 33 U.S.C. 466–466k); Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*).

§ 303.2 [Removed and Reserved]

7. Part 303 would be amended by removing and reserving § 303.2.

PART 305—OFFICIAL NUMBERS; INAUGURATION OF INSPECTION; WITHDRAWAL OF INSPECTION; REPORTS OF VIOLATION

8. The authority citation for Part 305 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438, 21 U.S.C., 71 *et seq.*, 33 U.S.C. 466–466k.

§ 305.4 [Amended]

9. The first and last sentences of § 305.4 would be amended by replacing "the circuit supervisor" with "an Inspection Program supervisor."

§ 305.5 [Amended]

10. Paragraph (a) of § 305.5 would be amended by adding "or to condemn and destroy meat food products found to be adulterated" after "condemned products" in the first sentence.

11. Section 305.6 would be revised to read as follows:

§ 305.6 Reports of violations.

Inspection Program employees and other representatives of the Department shall report, in a manner prescribed by the Administrator, all violations of the Act and noncompliance with the rules and regulations of which they have knowledge or information.

PART 306—ASSIGNMENT AND AUTHORITIES OF PROGRAM EMPLOYEES

12. The authority citation for Part 306 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*, 33 U.S.C. 117(b).

13. Section 306.1 would be amended by revising the title and the text to read as follows and the Table of Contents would be amended accordingly:

§ 306.1 Designation of supervisors.

The Administrator shall designate Inspection Program supervisors.

§ 306.2 [Amended]

14. Section 306.2 would be amended by adding "Inspection" before "Program" in the title and in the first sentence and by replacing "to which they are assigned" with "in which they are authorized to perform Inspection Program functions" in the first sentence. The Table of Contents would be amended accordingly.

§ 306.3 [Amended]

15. Section 306.3 would be amended by adding "or she" after "he" each time "he" appears and by adding "or her" after "him" and replacing "to which he is assigned" with "in which he or she is authorized to perform Inspection Program functions" in the second sentence.

§ 306.5 [Amended]

16. Section 306.5 would be amended by adding "Inspection" before "Program," in the first sentence and by replacing "inspector in charge" with "designated program employee" in the second sentence.

PART 307—FACILITIES FOR INSPECTION

17. The authority citation for Part 307 would continue to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695, 7 CFR 2.15(a), 2.92.

§ 307.1 [Amended]

18. Section 307.1 would be amended by adding "Inspection" before "Program" in the title, by replacing "the inspector and other" with "Inspection" and removing "assigned thereto" in the first sentence, by adding "or other designated Inspection Program supervisor" after "circuit supervisor" both times "circuit supervisor" appears and adding "Inspection" before "Program" both times "Program" appears in the second sentence, and by deleting "requiring the services of less than one full time inspector" and adding "Inspection" before "Program" in the third sentence. The Table of Contents would also be amended accordingly.

§ 307.2 [Amended]

19. Section 307.2 would be amended by adding "or other designated Inspection Program supervisor" after "circuit supervisor" in the first sentence of the introductory text and in paragraph (j) and by adding "Inspection" before "Program" in paragraph (d), the first sentence of paragraph (h), and paragraph (k).

20. Section 307.4 would be amended by revising the title and replacing paragraph (a) with paragraph (a)(1) to read as follows and the Table of Contents would be amended accordingly:

§ 307.4 Conduct and schedule of operations.

(a) Slaughter operations.

(1) No slaughter operations requiring inspection shall be conducted except under the supervision of an Inspection Program employee. All slaughtering of animals shall be done with reasonable speed, considering the official establishment's facilities.

* * * * *

21. Section 307.4 would be revised further by redesignating paragraph (b) as paragraph (a)(2), by redesignating paragraph (c) as paragraph (a)(3), and by amending the new paragraph (a)(3) in the first sentence by replacing the words "importers, and exporters" with

"conducting slaughter operations" and by removing the last sentence.

22. A new paragraph (b) would be added to § 307.4 to read as follows:

* * * * *

(b) Operations other than slaughter.

(1) No operations, other than slaughter, requiring inspection shall be conducted except under such coverage by Inspection Program employees as the Inspection Program determines to be appropriate to assure effective regulation of meat food products and protection of the public health and welfare. All preparation of products shall be done with reasonable speed, considering the official establishment's facilities.

(2) Official establishments preparing meat food products will establish a regularly scheduled operating period for each workday in the basic workweek. Once established, the scheduled operating period, and mealtimes and rest breaks within the operating period, must remain relatively constant as to time and duration to facilitate the scheduling of inspection activities.

(3) Official establishments, importers and exporters shall not be charged for inspection service that is furnished, up to 12 consecutive hours per day, if provided during scheduled operations conducted between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, subject to the provisions of § 307.5. Alternatively, official establishments, importers and exporters may elect to establish as their basic workweek during which inspection service is provided without charge, subject to the provisions of § 307.5, any 5 consecutive 8-hour days within the administrative workweek Sunday through Saturday, excluding the lunch period; except that, when possible, the Department shall schedule the basic workweek so as to consist of 5 consecutive 8-hour days Monday through Friday, excluding lunch period. The Department may depart from the basic workweek in those cases where maintaining such a schedule would seriously handicap the Department in carrying out its function.

23. Paragraph (d) of § 307.4 would be redesignated "(c) Approval of schedules" and would be amended in subparagraph (2) by adding "changes in the workweek or" after "involving" in the second sentence and by adding "or designated Inspection Program supervisor" after "inspector in charge" in the last sentence, and by revising subparagraph (3) to read as follows:

(c) Approval of schedules. * * *

(3) Requests to operate outside an approved work schedule shall be made to the designated Inspection Program supervisor as early in the day as possible for operations to be conducted within the same workday, or prior to the end of the day's operation for operations to be conducted at the start of the following day: *Provided*, That an Inspection Program employee may be called back to duty after completion of his or her daily tour of duty under the provisions of § 307.6(b) of this subchapter.

§ 307.5 [Amended]

24. Paragraph (a) of § 307.5 would be amended by replacing all text after the word "section;" with the following: "outside the times and days specified in § 307.4(b)(3) of this part; during an approved work schedule when operations are not being conducted and reasonable notice thereof has not been provided to the program; or during any operations conducted outside a work schedule approved under § 307.4 of this part that requires an inspection program employee to work more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday."

25. Section 307.6 would be amended by adding "Inspection" before "Program" in paragraph (a) and by revising paragraph (b) to read as follows:

§ 307.6 Basis of billing for overtime and holiday services.

* * * * *

(b) Official establishments, importers, or exporters requesting and receiving the services of an Inspection Program employee who is called back to duty during any overtime or holiday period after completion of his or her tour of duty shall be billed for a minimum of 2 hours of overtime or holiday inspection service at the established rate.

PART 308—SANITATION

26. The authority citation for Part 308 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*

§ 308.3 [Amended]

27. Section 308.3 would be amended by adding "or other designated Inspection Program supervisor" after "circuit supervisor' each time "circuit supervisor" appears in paragraphs (c) and (d) (1) and (2).

§ 308.5 [Amended]

28. Paragraph (e) of § 308.5 would be amended by replacing "Program inspectors" with "Inspection Program employees."

§ 308.8 [Amended]

29. Section 308.8 would be amended by adding "or other Inspection Program employee" after "inspector in charge" in the second sentence of paragraph (d) and by adding "or other Inspection Program supervisor" after "circuit supervisor" in paragraph (f).

§ 308.15 [Amended]

30. Section 308.15 would be amended and the Table of Contents would be amended accordingly by adding "and tagging products prepared therewith or therein" after "compartments" in the title, by adding "or she" and "he" in the first sentence, and by replacing "a Program" with "an Inspection Program" in the first and third sentences.

31. Section 308.15 would be further amended by designating the second and third sentences as paragraph (a) and by adding paragraph (b) to read as follows:

§ 308.15 Tagging insanitary equipment, utensils, rooms or compartments and tagging products prepared therewith or therein.

* * * * *

(b) When any equipment, utensil, room, or compartment is so tagged by an Inspection Program employee, he or she shall place a "U.S. Retained" tag on product(s) prepared using such equipment or utensil or prepared, packed or held in such room or compartment and remaining at the official establishment if such product(s) is or are suspected of being adulterated. Product(s) so tagged shall be held for further examination and such tag shall not be removed by anyone other than an Inspection Program employee upon disposition in accordance with this subchapter.

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

32. The authority citation for Part 312 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*

§ 312.5 [Amended]

33. Section 312.5 would be amended by removing "railroad cars or other means of conveyance" in the first sentence and by removing "to the means of conveyance", adding "Inspection" before "Program", adding "or she" after "he", and replacing "a 'Warning Tag' (Form MP–408–3)" with "any tag required by Part 325 of this subchapter" in the second sentence.

34. Section 312.6 would be amended and the Table of Contents would be amended accordingly by revising the

title and revising the portion of paragraph (a) preceding subparagraph (1) to read as follows:

§ 312.6 Official marks and devices in connection with post-mortem inspection and inspection of meat food product preparation; identification of adulterated products and insanitary equipment and facilities.

(a) The official marks required by Part 310 of this subchapter for use in post-mortem inspection are:

* * * * *

35. Paragraph (a)(2) of § 312.6 would be amended by replacing "products and articles" with "carcasses and parts of carcasses."

36. Paragraph (a)(3) of § 312.6 would be amended by deleting "which" and would be redesignated as paragraph (c), and paragraphs (a)(4) and (a)(5) would each be amended by replacing "products" and "carcasses and parts of carcasses" and would be redesignated as paragraphs (a)(3) and (a)(4), respectively.

37. Paragraph (b) of § 312.6 would be amended by replacing "U.S. Retained and U.S. Rejected tags," with "tags" and replacing "paragraph (a)" with "paragraphs (a) through (c)" and would be redesignated as paragraph (d).

38. Section 312.6 would be further amended by adding a new paragraph (b) to read as follows:

* * * * *

(b) The official marks and devices for use by Inspection Program employees in connection with meat food product inspection are:

(1) The "U.S. Retained" mark which is used to identify meat food product that is held for further evaluation to determine its disposition and which is applied by a tag (Form MP–35).

(2) The "U.S. Inspected and Condemned" mark which is used to identify meat food product that has been found to be adulterated and is condemned and which is applied by a tag (Form MP–_____).

39. Section 312.10 would be revised to read as follows:

§ 312.10 Official mark for maintaining the identity and integrity of samples.

The official mark for use in sealing containers of samples taken by Inspection Program employees, including samples taken by an authorized representative of the Secretary pursuant to section 202 of the Act, shall bear the designation "Sample Seal" accompanied by the official USDA logo as shown below. Any seal approved by the Administrator for applying such mark shall be an official device for purposes of the Act. The Department will supply such device to Inspection Program employees and other authorized representatives of the Secretary.

PART 314—HANDLING AND DISPOSAL OF CONDEMNED OR OTHER INEDIBLE PRODUCTS AT OFFICIAL ESTABLISHMENTS

40. The authority citation for Part 314 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*, 33 U.S.C. 466–466k.

§ 314.1 [Amended]

41. Section 314.1 would be amended and the Table of Contents would be amended accordingly by adding "slaughtering livestock and" after "establishments" in the title and by adding "upon ante-mortem or post-mortem inspection or reinspection of slaughtered livestock" before "at official establishments" in the first sentence of paragraph (a).

§ 314.3 [Amended]

42. Section 314.3 would be amended and the Table of Contents would be amended accordingly by adding "slaughtering livestock and" after "establishments" in the title and by adding "upon ante-mortem or post-mortem inspection or reinspection of slaughtered livestock" before "at an official establishment" in the first sentence of paragraph (a).

43. Part 314 would be further amended and the Table of Contents would be amended accordingly by adding a new § 314.13 to read as follows:

§ 314.13 Disposition of products found to be adulterated or condemned upon reinspection at official establishments preparing meat food products.

Products condemned upon reinspection at an official establishment preparing meat food products, shall be disposed of by one of the methods listed in this paragraph, under the supervision of an Inspection Program employee. Any product determined by the operator of an establishment to be adulterated but which has not been condemned shall be destroyed for human food purposes, by the operator, by one of the methods listed in this paragraph. Facilities and materials for carrying out the requirements in this section shall be furnished by the official establishment.

(a) Steam treatment, which shall be accomplished by processing the product in a pressure tank under at least 40 pounds of steam pressure, or thorough cooking in a kettle or vat, for a sufficient time to effectively destroy the product for human food purposes and preclude dissemination of disease through consumption by animals. Equipment used for this purpose shall comply with the requirements of § 314.2 of this subchapter.

(b) Incineration or complete destruction by burning.

(c) Denaturing with a material and by the method prescribed in § 314.3(a) of this subchapter or destruction for human food purposes with another material and/or method approved by the Administrator in specific cases.

PART 316—MARKING PRODUCTS AND THEIR CONTAINERS

44. The authority citation for Part 316 would continue to read as follows:

Authority: 34 Stat. 1264, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k.

45. Section 316.8 would be amended and the Table of Contents revised accordingly by revising the title and paragraph (a) to read as follows:

§ 316.8 Movement of unmarked inspected and passed products.

(a) Except as provided in paragraph (b) of this section, unmarked products which have been inspected and passed but do not bear the official inspection legend shall not be removed from an official establishment and shall not be brought into an official establishment.

* * * * *

46. Paragraph (b) of § 316.8 would be amended by replacing the first word with "Unmarked products," adding "and transported in compliance with Part 325 of this subchapter" before ": *Provided,* That", and replacing the portion of the provision after "unless" and before "required" with "such product is available for reinspection by an Inspection Program employee and is packed in containers bearing all such information, as".

§ 316.9 [Amended]

47. Paragraph (b) of § 316.9 would be amended by deleting the portion of the first sentence after "first inspected and passed", and by adding "as such establishment" after "products" in the second sentence.

§ 316.10 [Amended]

48. Section 316.10 would be amended by replacing "branded" with "marked" in the second sentence of paragraph (a) and by replacing everything after "further processing," and before the period with "each such container is sealed with an unofficial seal applied by the establishment from which such product is shipped and including its establishment number" in the last sentence of paragraph (b).

§ 316.13 [Amended]

49. Paragraph (e) of § 316.13 would be amended by adding "applicable" before "markings" and by replacing "§ 325.7(b)" with "§ 325.7 (a) and (b)."

50. Paragraph (g) of § 316.13 would be amended by revising all text after "*Provided,*" to read: "That the stencils, box dies, labels, and brands are not false or misleading and are approved as provided for in Part 317 of this subchapter."

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

51. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

§ 317.4 [Amended]

52. Paragraph (a) of § 317.4 would be amended in the first sentence by adding at the end before the period ", except as expressly provided otherwise in this part", and in the fourth sentence by replacing "the inspector-in-charge" with "a designated Inspection Program employee" and adding "; and a copy of the approval of any labeling, including any labeling upon which generic approval is based, shall be maintained by the establishment in which it is to be used and made available for review by Inspection Program employees" at the end before the period.

53. Paragraph (c) of § 317.4 would be amended by replacing "inspectors in charge" with "designated Inspection Program employees."

54. The title and paragraph (e) introductory text, (1), and (2) of § 317.4 would be revised to read as follows and the Table of Contents would be revised accordingly:

§ 317.4 Labeling to be approved prior to use.

* * * * *

(e) Approval may be presumed in certain cases.

(1) Certain labeling may be used without express notice of approval by the Standards and Labeling Division if it has been reviewed for compliance with applicable labeling requirements by a responsible establishment official who thereby may authorize use by that establishment of labeling listed in paragraph (e)(3) of this section: *Provided,* that the labeling conforms to all applicable provisions of this Part and is used so as not to be false or misleading; that prior to use the label, together with a transmittal referencing this paragraph and signed by the designated establishment official, is mailed first class to the Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, for filing and audit; that complete records of such label correspondence and any related documentation are maintained at the establishment in accord with § 320.1(b)(8) of this subchapter; and that upon written notice that one or more establishment labels have been found by the Standards and Labeling Division to be false or misleading in some particular, the presumption that such labels are approved fails and all labeling thereafter will require express approval under paragraphs (a) through (d) of this section or under § 317.5 until the cited mislabeling problem(s) is resolved to the satisfaction of the Standards and Labeling Division.

(2) Information concerning previous Standards and Labeling Division label review determinations and approval policies will be made available as guidelines to all official establishments desiring to use unapproved labels under this paragraph (e).

55. Paragraph (e) of § 317.4 would be further amended by revising subparagraph (3) in the opening clause to read "Labeling that may be presumed to be approved under this paragraph (e):"; in subparagraph (3)(iii) to remove from the proviso "in the opinion of the inspector-in-charge" and "sufficiently", in subparagraph (3)(iii)(E) to remove from the proviso "inspector-in-charge is satisfied that sufficient"; in subparagraph (3)(iv) to replace "inspector-in-charge" with "designated program employee", and by removing subparagraph (3)(viii).

§ 317.5 [Amended]

56. Paragraph (a) of § 317.5 would be amended by replacing "the inspector-in-charge" with "a designated Inspection Program employee" each time "the inspector-in-charge" appears in the second and third sentences.

57. Paragraph (b)(11) of § 317.5 would be amended by replacing "the inspector-in-charge assigned to that establishment" with "a designated Inspection Program employee".

§ 317.6 [Amended]

58. Section 317.6 would be amended by replacing all text after "§ 317.3" with a period.

§ 317.10 [Amended]

59. Paragraph (b) of § 317.10 would be amended by removing "under the supervision of a program employee" and replacing it with "under inspection coverage".

§ 317.11 [Amended]

60. Paragraph (b) of § 317.11 would be amended in the last sentence by removing "under the supervision of a program employee" and replacing it with "under inspection coverage".

§ 317.13 [Amended]

61. The first sentence of § 317.13 would be amended by replacing the portion of the first sentence after "inspector in charge at" with "an establishment slaughtering livestock or an Inspection Program employee designated for any other originating establishment. Such inspector in charge or other Inspection Program employee will notify Inspection Program personnel, in accordance with instructions issued by the Inspection Program, concerning the date of shipment, quantity, and type of material to be received by the destination establishment".

§ 317.14 [Amended]

62. Section 317.14 would be amended by replacing "the inspector at" with "an Inspection Program employee designated for" in the first sentence and by replacing "inspector" with "designated Inspection Program employee" each time "inspector" appears in the second, third, and fourth sentences.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

63. The authority citation for Part 318 would continue to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

64. Paragraph (a) of § 318.1 would be amended by replacing "by a Program employee" with "in accordance with the regulations" in the first sentence and by revising the third, fourth, and fifth sentences as two sentences to read as follows:

§ 318.1 Products and other articles entering official establishments.

(a) * * * Product entering any official establishment shall be identified by the operator of such establishment and subject to reinspection by an Inspection Program employee in accordance with § 318.2 of this subchapter. Any product originally prepared at any official establishment may not be returned to any part of such establishment, other than the receiving area approved under § 318.3 of this subchapter, until the operator of such establishment has evaluated its condition to assure that entry and any further use of such product will be in accordance with §§ 318.4(b) and 318.6(a) of this subchapter.

§ 318.2 [Amended]

65. The first sentence of § 318.2(a) would be amended by adding "in a manner acceptable to the Inspection Program" after "identified" and adding "Inspection" before "Program".

66. Paragraph (c) of § 318.2 would be amended by replacing "The circuit supervisor" with "An Inspection Program supervisor" and replacing "the program employee" with "Inspection Program employees" in the second sentence and by replacing "the Circuit Supervisors of Program circuits" with "Inspection Program supervisors" in the first sentence of the footnote.

67. Paragraph (d) of § 318.2 would be amended by adding "Inspection" before "Program" in the first and second sentences, by replacing "the inspector" with "an Inspection Program employee" each time "the inspector" appears in the third and fourth sentences, and by replacing "The inspector" with "Inspection Program employees" and "his" with "their" in the last sentence.

§ 318.3 [Amended]

68. Section 318.3 would be amended by adding "or other designated Inspection Program supervisor" after "circuit supervisor".

69. The title of § 318.4 would be revised to read as follows and the Table of Contents would be revised accordingly:

§ 318.4 Preparation of products; operator responsibilities; plant operated quality control.

70. The first sentence of § 318.4(a) would be amended by replacing "supervised by Program employees" with "conducted under inspection coverage".

71. Paragraph (b) of § 318.4 would be amended by adding ", the acceptability of all articles used in preparing products," after "maintenance of the establishment" in the second sentence and by adding ", including records documenting such measures," after "measures" in the third sentence.

72. Paragraph (c)(4) of § 318.4 would be amended by replacing "the inspector in charge" with "a designated Inspection Program employee".

73. Paragraph (h) of § 318.4 would be removed.

74. The second sentence of § 318.5(a)(1) would be revised to read as follows:

§ 318.5 Requirements concerning procedures.

(a)(1) * * * When there is reason to doubt the soundness of any frozen product, the official establishment shall defrost a sufficient quantity thereof to determine its actual condition; an Inspection Program employee who doubts the soundness of any frozen product will require the defrosting and reinspect a sufficient quantity thereof to determine its actual condition.

75. The first sentence of § 318.5(a)(2) would be amended by replacing "inspector" with "Inspection Program".

§ 318.6 [Amended]

76. Section 318.6 would be amended by replacing "in" with "and" in the title and the Table of Contents would be revised accordingly.

77. Paragraph (a) of § 318.6 would be amended by redesignating the first sentence as subparagraph (1) and by replacing the second sentence with subparagraph (2) to read as follows:

**§ 318.6 * * *

(a) * * *

(2)(i) Official establishments shall furnish accurate information to Inspection Program employees on all procedures involved in product preparation, including product composition, and any changes in such procedures that may affect inspectional control of product.

(ii) If an Inspection Program employee determines that a procedure or procedures involved in meat food product preparation is or are resulting in the preparation of meat food product or products suspected of being adulterated or misbranded,

(A) all meat food product(s) prepared using such procedure(s) and remaining at the official establishment shall be held under a "U.S. Retained" tag for disposition in accordance with this subchapter, and

(B) The official inspection legend and other information required by Parts 316 and 317 of this subchapter shall not be placed on such product(s) or on any meat food product subsequently prepared using such procedure(s) until the official establishment has corrected the problem(s) with such procedure(s) and an opportunity has been afforded for an Inspection Program employee to verify the adequacy of the corrective action taken.

* * * * *

78. Paragraph (b)(1) of § 318.6 would be amended by adding "meat food" before "product."

79. Paragraphs (b) (2) and (10) of § 318.6 would be revised to read as follows:

**§ 318.6 * * *

* * * * * *

(b) * * *

(2) Casings shall not be used as containers of meat food product unless they have been carefully washed and thoroughly flushed with clean water immediately before stuffing, are clean, and are otherwise suitable for such use, except that preflushed animal casings packed in salt or salt and glycerine solution or in other approved medium which are clean and otherwise suitable may be so used without additional flushing if they are thoroughly rinsed before use.

* * * * *

(10) Dry milk products shall not be used in the preparation of meat food products unless such dry milk products were produced in a plant approved by the Department under the regulations in 7 CFR Part 58 and are otherwise suitable for such use.

80. The first sentence of § 318.8(b) would be amended by replacing "inspector in charge" with "Inspection Program."

§ 318.9 [Amended]

81. Section 318.9 would be amended by adding "Inspection" before "Program" and adding "to determine compliance with the regulatory requirements or otherwise necessary" after "necessary."

§ 318.10 [Amended]

82. Paragraph (c)(2)(v) of § 318.10 would be amended by removing "and in the custody of the Program" and replacing "an official Program lock or seal" with "a lock or seal and subject to such Inspection Program supervision as the Inspection Program determines is appropriate to prevent unauthorized

access thereto" in the first sentence and by replacing "under close supervision of an inspector" with "separate from other product and as the designated Inspection Program supervisor may require", deleting "under Program control", and adding "in compliance with § 325.7 of this subchapter" after "establishment" in the last sentence.

83. Paragraph (c)(2)(vi) of § 318.10 would be amended by removing "sealed railroad cars, sealed motortrucks, sealed trailers, or sealed" in the first sentence, by deleting the period at the end of the first sentence, and by replacing "Such vehicles and containers shall be sealed and transported between official establishments in accordance" with "if such containers and such transportation are in compliance" in the second sentence.

84. The second sentence of § 318.10(d) would be amended by replacing "Circuit" with "Designated Inspection Program."

85. The fourth sentence of § 318.12(a) would be amended by replacing "inspectional supervision" with "inpection, in accordance with § 307.4(a) of this subchapter" and replacing "regular hours of inspection" with "establishment's approved work schedule."

§ 318.12 [Amended]

86. The fourth sentence of § 318.12(b) would be amended by replacing "supervision" with "control."

§ 318.14 [Amended]

87. Paragraph (a) of § 318.14 would be amended by adding "the official establishment shall notify the inspector in charge or, if such establishment prepares meat food products, the designated Inspection Program supervisor as soon as possible, and" after "establishment,".

88. The first sentence of § 318.14(b) would be amended by replacing "the supervision of an inspector," with "such Inspection Program supervision as the Inspection Program determines is appropriate,".

89. The first sentence of § 318.14(c) would be amended by replacing "supervision of an inspector," with "such Inspection Program supervision as the Inspection Program determines is appropriate".

90. The first sentence of § 318.15 would be revised to read as follows:

§ 318.15 Tagging chemicals, preservatives, cereals, spices, etc., "U.S. Retained."

Any chemical, preservative, cereal, spice, or other substance intended for use in an official establishment is subject to examination by an Inspection Program employee and, if found upon such examination to be unfit or otherwise unacceptable for the use intended or if final decision regarding acceptability is deferred pending laboratory or other examination, the Inspection Program employee shall attach a "U.S. Retained" tag to the substance or container thereof. * * *

91. The second sentence of § 318.15 would be amended by replacing "circuit supervisor" with "designated Inspection Program supervisor" and adding "Inspection" before "Program."

§ 318.17 [Amended]

92. Paragraph (f) of § 318.17 would be amended by replacing "inspector-in-charge" with "designated Inspection Program supervisor."

93. Paragraph (h)(1) of § 318.17 would be revised to read as follows:

§ 318.17 Requirements for the production of cooked beef, roast beef, and cooked corned beef.

* * * * *

(h) * * *

(1) The establishment shall identify for each lot the processing procedure to be used, including time and temperature.

94. Paragraph (i)(3) of § 318.17 would be amended by replacing "through the inspector-in-charge to the Circuit Supervisor" with "to the designated Inspection Program supervisor."

95. Paragraph (k) of § 318.17 would be amended by replacing "Circuit Supervisor" with "designated Inspection Program supervisor."

96. Paragraph (c)(1) of § 318.302 would be amended by replacing "the inspector at the establishment" with "a designated Inspection Program employee."

§ 318.302 [Amended]

97. Paragraph (c)(2) of § 318.302 would be amended by replacing "the inspector" with "a designated Inspection Program employee" in the third sentence and by replacing "the inspector at the establishment" with "a designated Inspection Program employee" in the last sentence.

§ 318.308 [Amended]

98. Paragraph (d)(1)(ii) of § 318.308 would be amended by replacing "is filed with the inspector" with "provided to a designated Inspection Program employee."

99. Paragraph (d)(1)(iii) of § 318.308 would be amended by replacing "the inspector" with "a designated Inspection Program employee."

100. Paragraph (d)(1)(v) of § 318.308 would be amended by replacing "is not on file with the inspector" with "has not been provided to a designated Inspection Program employee."

§ 318.309 [Amended]

101. The first full sentence of the Text of § 318.309(d)(1)(vi) would be amended by replacing "the inspector" with "a designated Inspection Program employee."

102. The first full sentence of § 318.309(d)(2)(ii) would be amended by replacing "the inspector" with "a designated Inspection Program employee."

PART 320—RECORDS, REGISTRATION, AND REPORTS

103. The authority citation for Part 320 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 930, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*

104. Paragraph (b) of § 320.1 would be amended by adding subparagraphs (7) and (8) to read as follows:

§ 320.1 Records required to be kept.

* * * * *

(b) * * *

(7) Records of the destruction for human food purposes of meat food products by the operator of an official establishment to be adulterated and destroyed by such operator when not under the supervision of an inspection program employee.

(8) Records of labels used in the establishment under Part 317 of this subchapter.

§ 320.6 [Amended]

105. Paragraph (a) of § 320.6 would be amended by adding "Inspection" before "Program", deleting "daily" before "reports", and replacing "to which they are assigned" with "at which they are performing Inspection Program functions."

106. Paragraph (a) of § 320.6(b) would be amended by replacing "the establishment" with "an establishment slaughtering livestock or the Inspection Program supervisor designated for any other establishment preparing meat food product."

§ 320.7 [Amended]

107. Section 320.7 would be amended by adding "at an official establishment slaughtering livestock or the Inspection Program supervisor designated for an official establishment not slaughtering livestock" after "Agriculture,".

PART 322—EXPORTS

108. The authority citation for Part 322 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq., 601 et seq.*

109. The first sentence of § 322.2(a) would be amended by adding "or other designated Inspection Program employee" after "inspector in charge", and the following sentence would be added to the end of paragraph: "Exporters requiring export inspection services provided for under this section should contact their designated program employee or the Export Coordination Division, International Programs, FSIS, U.S. Department of Agriculture, Washington, DC 20250.

110. Paragraph (f) of § 322.2 would be amended by replacing "circuit" with "an appropriate Inspection Program."

111. Paragraph (h) of § 322.2 would be amended by replacing "inspectors" with "Inspection Program employees" and replacing "not under their supervision" with "at which they do not regularly perform Inspection Program functions."

PART 325—TRANSPORTATION

112. The authority citation for Part 325 would continue to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); *76 Stat. 653 (7 U.S.C. 450 et seq.*).

§ 325.5 [Amended]

113. Section 325.5 would be amended by deleting "under official seal" in the title and the Table of Contents would be revised accordingly.

114. Paragraph (a) of § 325.5 would be amended by removing the second sentence and by replacing everything after the comma in the first sentence with "if (1) such product is so transported in a closed container or containers bearing the official inspection legend and all other information required by Parts 316 and 317 of this subchapter and (2) each such container is sealed with an unofficial seal that is applied by the establishment from which such product is transported and includes its establishment number."

115. The form of the certificate required by § 325.5(b) would be amended by replacing the line "Car number and initials _____" with "Container number(s) _____" and removing the line "License number of other means of conveyance _____" and by replacing everything after "Agriculture;" and before the period in the next sentence with "and such product has been placed in the closed container(s) specified above, which has/have been sealed by the official establishment specified above as the consignor."

§ 325.6 [Amended]

116. Section 325.6 would be amended and the Table of Contents would be revised accordingly by deleting "under official seal" in the title and by replacing everything after "processing" in the text with "only if so transported in sealed closed containers with certificates, as prescribed in § 325.5 of this subchapter."

§ 325.7 [Amended]

117. Section 325.7 would be amended and the Table of Contents would be amended accordingly by removing paragraph (a), by deleting "or 'pork product —°F. — days refrigeration' " in the sixth sentence and deleting the third sentence from the end in paragraph (b), by redesignating paragraph (b) as paragraph (a), and by revising the title and the first sentence and last 2 sentences of redesignated paragraph (a) to read as follows:

§ 325.7 Shipment of certain products between official establishments for further handling; seals and certificates.

(a) Product passed for cooking or beef that is to be refrigerated to destroy cysticerci may be shipped from one official establishment to another official establishment for further handling in accordance with Part 318 of this subchapter only if packed in a closed container or containers individually sealed with the official seal of the Department, as prescribed in § 325.16 of this subchapter, and as hereinafter provided. * * * For each consignent of such restricted product, the Inspection Program employee affixing the official seal of the Department shall promptly issue and forward to the Inspection Program supervisor designated for the destination establishment a report in the form of a notice of product shipped in sealed containers which shows that the contents of such container(s) are restricted, and shall forward a duplicate copy to the area office for the area in which the official establishment from which such product is shipped is located.

118. Section 325.7 would be further amended by adding paragraph (b) to read as follows:

* * * * *

(b) Pork that has been refrigerated to destroy trichinae may be shipped from one official establishment to another official establishment for further handling in accordance with §318.10 of this subchapter only if packed in a closed container or containers—

(1) Individually sealed with an unofficial seal that is applied by the establishment from which such product is transported and includes its establishment number and

(2) Bearing the official inspection legend and the statement "Pork Product —°F. — Days Refrigeration."

119. Paragraph (c) of § 325.7 would be amended by removing "in the form set out in § 325.5(b)" in the first sentence and by adding a sentence after that sentence to read as follows:

* * * * *

(c) * * * Such certificate shall be in the form set out in § 325.5(b) of this subchapter, except that for product passed for cooking or beef that is to be refrigerated to destroy cysticerci such certificate shall indicate that the contents are restricted product and that the container(s) has/have been sealed by an Inspection Program employee with official U.S. Government seal(s) and the number(s) of such seals. * * *

§ 325.10 [Amended]

120. The next to last sentence of § 325.10(a) would be amended by replacing "inspector at" with "Inspection Program supervisor designated for."

121. The first sentence of § 325.10(b) would be amended by revising the first portion, ending with "establishment;", to read as follows:

§ 325.10 * * *

* * * * *

(b) A careful inspection shall be made of such product by an Inspection Program employee upon arrival of the shipment at the receiving establishment; if no Inspection Program employee is present, the receiving establishment shall notify the designated Inspection Program supervisor who will, when so notified, arrange for such examination. If it is found that the article is not adulterated, the article may be received into the establishment;" * * *

§ 325.16 [Amended]

122. Paragraph (a) of § 325.16 would be amended by replacing "§ 312.5(a)" with § 312.5."

123. Paragraph (b) of § 325.16 would be amended by replacing "Except as provided in § 325.18(b)" with "An" and adding "Inspection" before "Program" in the first sentence, by designating the first sentence as subparagraph (1), by designating the second sentence as subparagraph (2), and by adding a sentence at the end of subparagraph (1) to read as follows:

§ 325.16 Official seals; forms, use, and breaking.

* * * * *

(b)(1) * * * If no Inspection Program employee is present at an official

establishment receiving product transported under official seal, the Inspection Program supervisor designated for such establishment will, when notified by that establishment, arrange for the breaking of such seal(s) by an Inspection Program employee.

* * * * *

§ 325.17 [Amended]

124. Section § 325.17 would be amended by removing "sealed" in the title, by replacing "an officially sealed" with "a" before "railroad car" in the first clause, and by replacing "under official seal" with "in sealed closed container(s)" in the last clause.

§ 325.18 [Amended]

125. Section § 325.18 would be amended by removing the designation of the first paragraph as (a) and by removing paragraph (b).

PART 327—IMPORTED PRODUCTS

126. The authority citation for Part 327 would continue to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 601 *et seq.*

§ 327.2 [Amended]

127. Paragraph (a)(2)(ii)(*d*) of § 327.2 would be amended by adding "official coverage and controls for all other" before "preparation of product."

128. Paragraph (a)(2)(ii)(g) of § 327.2 would be amended by replacing "over condemned material until" with "for assuring that condemned material is."

§ 327.4 [Amended]

129. The form of the certificate required by § 327.4(b) would be amended by removing "continuous supervision of an inspector under" in the first full sentence.

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

130. The authority citation for Part 331 would continue to read as follows:

Authority: Secs. 21 and 301, 81 Stat. 584, 588, 592, 593, 595 (21 U.S.C. 621, 661).

§ 331.3 [Amended]

131. Paragraph (e)(1) of § 331.3 would be amended by replacing "the circuit supervisor of the circuit in which the establishment is located" with "a designated Inspection Program supervisor" in the first sentence and by replacing "circuit" with "Inspection Program" and adding "or she" after "he" in the second sentence.

132. Paragraph (e)(2) of § 331.3 would be amended by replacing "circuit" with "Inspection Program", adding "or she" after "he", and replacing "Labeling and Packaging Staff" with "Standards and Labeling Division."

133. Paragraph (e)(3) of § 331.3 would be amended by replacing "circuit" with "Inspection Program" each time "circuit" appears in the first and second sentences and by replacing "Labels and Packaging Staff, Meat and Poultry Inspection" with "Standards and Labeling Division, Technical Services" in the first sentence.

134. Paragraph (e)(4) of § 331.3 would be amended by replacing "circuit" with "Inspection Program" in the first sentence.

PART 335—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE FEDERAL MEAT INSPECTION ACT

135. The authority citation for Part 335 would continue to read as follows:

Authority: 34 Stat. 1264, as amended (21 U.S.C. 621), unless otherwise noted.

§ 335.11 [Amended]

136. The first sentence of paragraph (a) of § 335.11 would be amended and the Table of Contents would be amended accordingly by adding "or meat food product found to be adulterated" after "product" in the title and by removing the comma after "meat food product", adding ", or has failed to condemn and destroy meat food product found to be adulterated as required under section 6 of the Federal Meat Inspection Act (21 U.S.C. 606)," after "(21 U.S.C. 604 and 606)", replacing "he" with "the Administrator" after "subchapter", and adding "or meat food product(s) found to be adulterated" after "condemned articles".

137. Paragraph (b) of § 335.11 would be amended by adding "or any meat food product found to be adulterated" before "as specified" in the first sentence.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

138. The authority citation for Part 381 would continue to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

139. Paragraphs (b)(26), (27), (28)(ii), (51)(ii), and (58) of § 381.1 would be revised to read as follows:

§ 381.1 Definitions.

* * * * *

(b) * * *

(26) *Inspection Service* or *Inspection Program.* "Inspection Service" or "Inspection Program" means the organizational unit within the Department having the responsibility for carrying out the provisions of the Act and the rules and regulations thereunder.

(27)(i) *Inspection Service employee* or *Inspection Program employee.* "Inspection Service employee" or "Inspection Program employee" refers to any inspector or other individual employed by the Department or any cooperating agency who is authorized to perform any function in connection with the Inspection Program.

(ii) *Inspection Service supervisor* or *Inspection Program supervisor.* "Inspection Service supervisor" or "Inspection Program supervisor" refers to an Inspection Program employee who is delegated authority to exercise supervision over one or more phases of the Inspection Program at a designated level.[1]

(28) * * *

(ii) *Inspector in charge.* This term means an Inspection Program employee who is designated as having primary responsibility for Inspection Program functions at a particular official establishment.

* * * * *

(51) * * *

(ii) *Circuit supervisor.* This term refers to an Inspection Program supervisor with responsibility for supervising the carrying out of Inspection Program functions at more than one official establishment.

* * * * *

(58) *U.S. Retained.* This term means that the poultry or carcass, or part or product of a carcass, of poultry so identified is held at an official establishment for further examination by an inspection program employee to determine its disposal.

140. Paragraph (b) of § 381.1 would be further amended by redesignating current subparagraph (43) as subparagraph (43)(i) and adding a subparagraph (43)(ii), and by adding a new subparagraph (63), to read as follows:

§ 381.1 Definitions.

* * * * *

(b) * * *

(43) * * *

---

[1] Information identifying the employees who have been delegated such authority is available from the Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(ii) *Further processing.* The term "further processing" refers to the conduct of any processing operation or combination of processing operations other than ones whereby poultry is slaughtered and/or eviscerated.

* * * * *

(63) *Area.* The organizational unit within the Inspection Program reporting to regional offices and responsible for the supervision of one or more circuit supervisors and for providing inspection coverage for establishments within a designated geographical area.

§ 381.3 [Amended]

141. Section 381.3 would be amended by removing and reserving paragraphs (c) through (e).

142. Section 381.4 would be amended by revising the title and the text to read as follows and by revising the Table of Contents accordingly:

§ 381.4 Inspection of products.

The Administrator will ensure inspection of products is conducted by Inspection Program employees as is necessary and appropriate under the Act and the regulations. The conditions and methods of inspection will vary among establishments, depending on the nature of operations, compliance history, and other conditions unique to each establishment. The conditions and methods of inspection will necessarily change from time to time to accommodate advances in inspection techniques and/or changes in establishment operations. Consequently, designated Inspection Program employees will determine for each establishment what inspection-related tasks and activities are appropriate, in accordance with guidelines provided by the Administrator that catalogue all current inspection tasks and activities that may apply in various establishments under various circumstances. Such guidelines shall be available for reference and use by the official establishments. Assigned inspection tasks and activities will be conducted by individual program employees as directed by the inspection program.

143. Subpart B would be further amended and the Table of Contents would be revised accordingly by adding a new § 381.8 to read as follows:

§ 381.8 Frequency and manner of inspection.

(a) In establishments processing poultry products at which inspection under the regulations is required, the frequency with which and the manner in which poultry products made from poultry previously slaughtered and eviscerated in official establishments are examined and inspected by Inspection Program employees shall be based on considerations relevant to effective regulation of poultry products and protection of the health and welfare of consumers and be determined in accordance with this section.

(b) The determinations referred to in paragraph (a) of this section shall be made by the Inspection Program and shall reflect its evaluations of the performance and the characteristics of such establishments.

(1) In assessing the performance of an establishment, the following factors are appropriate for consideration:

(i) The history of compliance with applicable regulatory requirements by the person operating such establishment or by anyone responsibly connected with the business that operates such establishment, as "responsibly connected" is defined in section 18(a) of the Act;

(ii) The procedures used in such establishment to control the production process, environment, and resulting product in order to assure and monitor compliance with the requirements of the Act and the rules and regulations thereunder.

(2) In assessing the characteristics of an establishment, the following factors are appropriate for consideration:

(i) The complexity of the processing operation(s) conducted at such establishment,

(ii) The frequency with which each such operation is conducted at such establishment,

(iii) The volume of product resulting from each such operation at such establishment,

(iv) Whether and to what extent slaughter and evisceration operations also are conducted at such

(v) What, if any, food products not regulated under this Act or the Federal Meat Inspection Act also are processed at such establishment, and

(vi) The size of such establishment.

(c) The Inspection Program shall base the conditions and methods of inspection coverage of operations other than slaughter and evisceration in an establishment making poultry products from poultry previously slaughtered and eviscerated in official establishment(s) on:

(1) The history of compliance at the establishment.

(2) The evaluation of the characteristics of such establishment described in paragraph (b)(2) of this section,

(3) The control procedures described in paragraph (b)(1)(ii) of this section,

(4) The significance of potential public health consequences of noncompliance, and

(5) The competence of the person operating such establishment, as indicated by:

(i) Knowledge of appropriate manufacturing practices and applicable regulatory requirements;

(ii) Demonstrated ability to apply such knowledge in a timely and consistent manner; and

(iii) Commitment to correcting deficiencies noted by Inspection Program employees and otherwise assuring compliance with applicable regulatory requirements; and

(6) The availability of Inspection Program employees.

§ 381.27 [Amended]

144. The first sentence of the text of § 381.27 would be amended by replacing "his supervisor" with "an Inspection Program supervisor."

145. Section 381.28 would be amended and the Table of Contents would be amended accordingly by revising the title and revising the text to read as follows:

§ 381.28 Reports of violations.

Inspection Program employees and other representatives of the Department shall report, in a manner prescribed by the Administrator, all violations of the Act and noncompliance with the rules and regulations of which they have knowledge or information.

146. Section 381.30 would be amended and the Table of Contents would be revised accordingly by redesignating the current provision as paragraph (a) and by revising the title and adding paragraph (b) to read as follows:

§ 381.30 Licensed or otherwise authorized inspectors; designation of supervisors.

(a) * * *

(b) The Administrator shall designate Inspection Program supervisors.

§ 381.35 [Amended]

147. Section 381.35 would be amended in the last sentence by replacing "inspector in charge" with "designated program employee."

§ 381.36 [Amended]

148. Paragraph (a) of § 381.36 would be amended by removing the heading *"Inspectors Office."*, by replacing "Service" with "Program" and "inspectors" with "Inspection Program employees" in the second sentence, and by deleting "requiring the services of less than one full-time inspector" and adding "Inspection" before "Program" in the third sentence.

149. Section 381.37 would be amended and the Table of Contents would be amended accordingly by revising the title to read as follows:

§ 381.37 Conduct and schedule of operations.

150. Paragraph (a) of § 381.37 would be revised to read as follows:

(a) Slaughter and evisceration operations.

(1) No slaughter or evisceration operations requiring inspection shall be conducted except under the supervision of an Inspection Program employee. All eviscerating of poultry shall be done with reasonable speed, considering the official establishment's facilities.

151. Section 381.37 would be revised further by redesignating paragraph (b) as paragraph (a)(2), by redesignating paragraph (c) as paragraph (a)(3), and by amending the new paragraph (a)(3) in the first sentence by replacing the words "importers and exporters" with "conducting slaughter and eviscerating operations" and by removing the last sentence.

152. A new paragraph (b) would be added to § 381.37 to read as follows:

* * * * *

(b) Operations other than slaughter and evisceration.

(1) No operations other than slaughter and evisceration, requiring inspection shall be conducted except under such coverage by Inspection Program employees as the Inspection Program determines to be appropriate to assure effective regulation of poultry products and protection of the public health and welfare. All further processing of products shall be done with reasonable speed, considering the official establishment's facilities.

(2) Official establishments preparing poultry products will establish a regularly scheduled operating period for each work day in the basic workweek. Once established, the scheduled operating period, and mealtimes and rest breaks within the operating period, must remain relatively constant as to time and duration to facilitate the scheduling of inspection activities.

(3) Official establishments, importers and exporters shall not be charged for inspection service that is furnished, up to 12 consecutive hours per day, if provided during scheduled operations conducted between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, subject to the provisions of § 381.38. Alternatively, official establishments, importers and exporters may elect to establish as their basic workweek during which inspection service is provided without charge, subject to the provisions of § 381.38, any 5 consecutive 8-hour days within the administrative workweek Sunday through Saturday, excluding the lunch period, except that, when possible, the Department shall schedule the basic workweek so as to consist of 5 consecutive 8-hour days Monday through Friday, excluding lunch period. The Department may depart from the basic workweek in those cases where maintaining such a schedule would seriously handicap the Department in carrying out its function.

153. Paragraph (d) of § 381.37 would be redesignated "(c) Approval of schedules"; and would be amended by adding in the last sentence of subparagraph (2) "or designated Inspection Program supervisor" after 'inspector in charge", and by revising subparagraph (3) to read as follows:

(c) Approval of schedules. * * *

(3) Requests to operate outside an approved work schedule shall be made to the designated Inspection Program supervisor as early in the day as possible for operations to be conducted within the same workday, or prior to the end of the day's operations for operations to be conducted at the start of the following day: *Provided*, That an Inspection Program employee may be called back to duty after completion of his or her daily tour of duty under the provisions of § 381.39(b) of this part.

§ 381.38 [Amended]

154. Paragraph (a) of § 381.38 would be amended by replacing the clause after "section;" with the following three clauses: "outside the times and days specified in § 381.37(b)(3) of this part; during an approved work schedule when operations are not being conducted and reasonable notice thereof has not been provided to the program; or during any operations conducted outside a work schedule approved under § 381.37 of this part that requires an inspection program employee to work more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday."

155. Section 381.39 would be amended by replacing "Service" with "Program" in paragraph (a) and by revising paragraph (b) to read as follows:

§ 381.39 Basis of billing for overtime and holiday services.

* * * * *

(b) Official establishments, importers, or exporters requesting and receiving the services of an Inspection Program employee who is called back to duty during any overtime or holiday period after completion of his or her tour of duty shall be billed for a minimum of 2 hours of overtime or holiday inspection service at the established rate.

§ 381.50 [Amended]

156. Paragraph (f) of § 381.50 would be amended by adding "or other designated Inspection Program supervisor" after "circuit supervisor."

§ 381-53 [Amended]

157. Paragraph (a)(5) of § 381.53 would be amended by replacing "Inspection Service inspectors" with "Inspection Program employees".

158. Subpart H would be further amended by adding a new § 381.58a to read as follows and the Table of Contents would be revised accordingly:

§ 381.58a Tagging.

When an Inspection Program employee identifies any equipment, utensil, room, or compartment as "U.S. Rejected" under § 381.99 of this part, he or she also shall, if poultry product(s) processed using such equipment or utensil or processed, packed and held in such room or compartment and remaining at the official establishment is or are suspected of being adulterated, identify such poultry product(s) as "U.S. Retained" under § 381.99 of this part for disposition in accordance with the regulations.

§ 381.95 [Amended]

159. Section 381.95 would be amended by adding to the end of the first paragraph the following sentence: "Carcasses, parts of carcasses or other poultry products not condemned but found to be adulterated by the operator of an establishment also shall be destroyed for human food purposes by one of the following methods."

§ 381.99 [Amended]

160. Section 381.99 would be amended by replacing "inspector" with "Inspection Program employee" in the first and last sentences.

161. A new § 381.102 would be added and the Table of Contents would be revised accordingly to read as follows:

§ 381.102 Official condemnation tag.

An inspection program employee may use such Tags or other devices and methods at an official establishment as may be approved by the Administrator for the identification and control of poultry and poultry products found to be adulterated. The Administrator has approved a paper Tag bearing the legend "U.S. Inspected and Condemned" (Form MP) for use on poultry and poultry products under this section. Such Tags are official devices and shall

not be removed by anyone other than an Inspection Program employee.

162. A new paragraph (d) would be added to § 381.105 to read as follows:

§ 381.105 Export certification; marking of containers.

* * * * *

(d) Exporters requiring export inspection services provided for under this section should contact their designated program employee or the Export Coordination Division, International Programs, FSIS, U.S. Department of Agriculture, Washington, DC 20250.

163. Section 381.112 would be revised to read as follows: § 381.112 Official mark for maintaining the identity and integrity of samples.

The official mark for use in sealing containers of samples taken by Inspection Program employees, including samples taken by an authorized representative of the Secretary pursuant to section 11(b) of the Act, shall bear the designation "Sample Seal" accompanied by the official USDA logo as shown below. Any seal approved by the Administrator for applying such mark shall be an official device for purposes of the Act. The Department will supply such device to Inspection Program employees and other authorized representatives of the Secretary.

§ 381.132 [Amended]

164. Paragraph (a) § 381.132 would be amended in the first sentence by adding at the end before the period", except as expressly provided otherwise in this part," and in the fourth by replacing "the inspector-in-charge" with "a designated Inspection Program employee" and by adding"; and a copy of the approval of any labeling, including any labeling upon which generic approval is based, shall be maintained by the establishment in which it is to be used and made available for review by Inspection Program employees" at the end before the period.

165. The title and paragraph (c) introductory text, (1), and (2) of § 381.132 would be revised to read as follows and the Table of Contents would be amended accordingly:

§ 381.132 Labeling to be approved prior to use.

* * * * *

(c) Approval may be presumed in certain cases.

(1) Certain labeling may be used without notice of prior approval by the Standards and Labeling Division if it has been reviewed for compliance with applicable labeling requirements by a responsible establishment official who thereby may authorize use by that establishment of labeling listed in paragraph (c)(3) of this section: *Provided,* that the labeling conforms to all applicable provisions of this Part and is used so as not to be false or misleading; that prior to use the label, together with a transmittal referencing this paragraph and signed by the designated establishment official, is mailed first class to the Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, for filing and audit; that complete records of such label correspondent and any related documentation are maintained at the establishment in accord with § 381.175(b)(8) of this subchapter; and that upon written notice that one or more establishment labels have been found by the Standards and Labeling Division to be false or misleading in some particular, the presumption that such labels are approved fails and all labeling thereafter will require express approval under paragraphs (a) through (d) of this section or under § 381.134 until the cited mislabeling problem(s) is resolved to the satisfaction of the Standards and Labeling Division.

(2) Information concerning previous Standards and Labeling Division label review determinations and approval policies will be made available as guidelines to all official establishments desiring to use unapproved lablels under this paragraph (c).

166. Paragraph (c) of § 381.132 would be further amended by revising subparagraph (3) in the opening clause to read "Labeling that may be presumed to be approved under this paragraph (c): ", in subparagraph (3)(iii) to remove from the proviso "in the opinion of the inspector-in-charge" and "sufficiently", in subparagraph (3)(iii)(E) to remove from the proviso "inspector-in-charge is satisfied that suficient", in subparagraph (3)(iv) to replace "inspector-in-charge" with "designated program employees", and by removing subparagraph (3)(viii).

§ 381.134 [Amended]

167. Paragraph (b)(11) of § 381.134 would be amended by replacing "the inspector-in-charge assigned to that establishment" with "a designated Inspection Program employee."

§ 381.137 [Amended]

168. Section 381.137 would be amended by replacing "inspector" with Inspection Program employee", adding "or she" after "he", and removing "on file."

§ 381.138 [Amended]

169. Paragraph (b) of § 381.138 would be amended by replacing the portion of the first sentence after "inspector in charge at" with "an establishment slaughtering or eviscerating poultry or an Inspection Program employee designated for any other originating establishment. Such inspector in charge or other Inspection Program employee will notify Inspection Program personnel, in accordance with instructions issued by the Inspection Program, concerning the date of shipment, quantity, and type of material to be received by the destination establishment."

§ 381.139 [Amended]

170. Paragraph (b) of § 381.139 would be amended by adding "or she" after "he" and replacing "inspector" with "Inspection Program employee."

§ 381.141 [Amended]

171. Section 381.141 would be amended by replacing "the inspector at" with "an Inspection Program employee designated for" in the first sentence and by replacing "inspector" with "designated Inspection Program employee" each time "inspector" appears in the second, third, and fourth sentences.

§ 381.145 [Amended]

172. The title of § 381.145 would be amended and the Table of Contents would be revised accordingly by replacing "examination and other requirements" with "requirements; plant operated quality control."

173. Paragraph (b) of § 381.145 would be amended by adding "in a manner acceptable to the Inspection Program" after "identified" in the first sentence, by replacing "examination by an inspector" with "reinspection by an Inspection Program employee" and deleting "by the inspector in charge" in the second sentence, by replacing

"examination" with "reinspection" in the third and fourth sentences, by replacing "The inspector in charge" with "an Inspection Program supervisor" and replacing "the program employee" with "Inspection Program employees" in the last sentence, and by replacing "the Circuit Supervisor" with "Inspection Program supervisors" in the first sentence of the footnote.

174. Paragraph (c)(4) of § 381.145 would be amended by replacing "the inspector in charge" with "a designated Inspection Program employee."

175. Paragraph (h) of § 381.145 would be removed and reserved.

§ 381.146 [Amended]

176. Section 381.146 would be amended and the Table of Contents would be revised accordingly by adding "and procedures" after "Sampling" in the title, by replacing "Inspectors" with "Inspection Program employees" and adding "or as may otherwise be deemed necessary for the efficient conduct of inspection" after "regulations" in the text, and by designating the current provision as paragraph (a).

177. Section 381.146 would be further amended by adding paragraph (b) to read as follows:

* * * * *

(b)(1) It is the responsibility of the operator of every official establishment to comply with the Act and regulations in this part. To carry out this responsibility effectively, the operator of the establishment shall institute appropriate measures to assure the maintenance of the establishment, the acceptability of all articles used in processing poultry products, and the processing, marking, labeling, packaging and other handling of its poultry products strictly in accordance with the sanitary and other requirements of this part. The effectiveness of such measures, including records documenting such measures, are subject to review by the Department.

(2) Official establishments shall furnish accurate information to Inspection Program employees on all procedures involved in further processing of poultry product, including product composition, and any changes in such procedures that may affect inspectional control of poultry product.

(3) If an Inspection Program employee determines that a procedure or procedures involved in further processing of poultry product is or are resulting in the processing of poultry product or products suspected of being adulterated or misbranded,

(i) All poultry product(s) further processed using such procedure(s) and remaining at the official establishment shall be held under a "U.S. Retained" tag for disposition in accordance with this part, and

(ii) The official inspection legend and other information required by Subpart N of this part shall not be placed on such poultry product(s) or on any poultry product subsequently further processed using such procedure(s) until the official establishment has corrected the problem(s) with such procedure(s) and an opportunity has been afforded for an Inspection Program employee to verify the adequacy of the corrective action taken.

§ 381.151 [Amended]

178. Paragraph (a) of § 381.151 would be amended by adding "the official establishment shall notify the inspector in charge or, if such establishment further processes poultry products, the designated Inspection Program supervisor as soon as possible, and" after "establishment,".

179. The first sentence of § 381.151(b) would be amended by replacing "the supervision of an inspector," with "such Inspection Program supervision as the Inspection Program determines is appropriate,".

180. The first sentence of § 381.151(c) would be amended by replacing "supervision of an inspector" with "such Inspection Program supervision as the Inspection Program determines is appropriate."

§ 381.152 [Amended]

181. The third sentence from the end of § 381.152(a) would be amended by replacing "the supervision of an inspector" with "inspection, in accordance with § 381.37(a) of this part."

182. The last sentence of § 381.152(b) would be amended by replacing "supervision by an inspector" with "inspection coverage."

183. Paragraph (b) of § 381.175 would be amended by adding subparagraphs (4) and (5) to read as follows:

§ 381.175 Records required to be kept.

* * * * *

(b) * * *

(4) Records of the destruction for human food purposes of further processed poultry products found by the operator of an official establishment to be adulterated and destroyed by such operator when not under the supervision of an inspection program employee.

(5) Records of labels approved for use in the establishment under Subpart N of this part.

§ 381.180 [Amended]

184. Paragraph (a) of § 381.180 would be amended by adding "and other Inspection Program employees" after "inspectors", deleting "daily" before "reports", and replacing "to which they are assigned" with "at which they are performing Inspection Program functions."

§ 381.182 [Amended]

185. Section 381.182 would be amended by replacing "the inspector in charge" with "inspectors in charge and other appropriate Inspection Program employees."

§ 381.196 [Amended]

186. Paragraph (a)(2)(ii)(*d*) of § 381.196 would be amended by adding "official coverage and controls for all other" before "processing of poultry products."

187. Paragraph (a)(2)(ii)(*g*) of § 381.196 would be amended by replacing "over condemned material until" with "for assuring that condemned material is."

§ 381.222 [Amended]

188. Paragraph (d)(1) of § 381.222 would be amended by replacing "the Circuit Supervisor in which the establishment is located" with "a designated Inspection Program supervisor" in the first sentence and by replacing "Circuit Supervisor" with "Inspection Program supervisor" and adding "or she" after "he" in the second sentence.

189. Paragraph (d)(2) of § 381.222 would be amended by replacing "Circuit Supervisor" with "Inspection Program supervisor", adding "or she" after "he", and replacing "Labeling and Packaging Staff" with "Standards and Labeling Division."

190. Paragraph (d)(3) of § 381.222 would be amended by replacing "Circuit Supervisor" with "Inspection Program supervisor" each time "Circuit Supervisor" appears in the first and second sentences and by replacing "Labels and Packaging Staff, Meat and Poultry Inspection" with "Standards and Labeling Division, Technical Services" in the first sentence.

191. Paragraph (d)(4) of § 381.222 would be amended by replacing "Circuit Supervisor" with "Inspection Program supervisor" in the first sentence.

§ 381.302 [Amended]

192. Paragraph (c)(1) of § 381.302 would be amended by replacing "the inspector at the establishment" with "a designated Inspection Program employee".

193. Paragraph (c)(2) of § 381.302 would be amended by replacing "the inspector" with "a designated Inspection

Program employee" in the third sentence and by replacing "the inspector at the establishment" with "a designated Inspection Program employee" in the last sentence.

§ 381.308 [Amended]

194. Paragraph (d)(1)(ii) of § 381.308 would be amended by replacing "is filed with the inspector" with "provided to a designated Inspection Program employee".

195. Paragraph (d)(1)(iii) of § 381.308 would be amended by replacing "the inspector" with "a designated Inspection Program employee".

196. Paragraph (d)(1)(v) of § 381.308 would be amended by replacing "is not on file with the inspector" with "has not been provided to a designated Inspection Program employee".

§ 381.309 [Amended]

197. The first full sentence of § 381.309(d)(1)(vi) would be amended by replacing "the inspector" with "a designated Inspection Program employee."

198. The first full sentence of § 381.309(d)(2)(ii) would be amended by replacing "the inspector" with "a designated Inspection Program employee."

Done at Washington, DC, on October 3, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

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CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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